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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1292

OCEANIC CALIFORNIA INC.,

Appellant,

v.

THE NORTH CENTRAL COAST REGIONAL COMMISSION and THE CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION,

Appellees.

NATURAL RESOURCES DEFENSE COUNCIL, INC. and CALIFORNIA COASTAL ALLIANCE, INC.,

Intervenors and Appellees.

On Appeal from the Court of Appeal of the State of California, First Appellate District, Division One After Entry of Order by Supreme Court of the State of California Denying A Hearing

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

I.

OPINION BELOW.

The opinion of the Court of Appeal of the State of California, First Appellate District, Division One, is set forth

in Appendix A, *infra* and is also reported at 63 Cal.App.3d 57, 133 Cal.Rptr. 664.[1] The Notice received by Appellant that the Supreme Court of the State of California denied a hearing is set forth in Appendix B *infra*.

II.

JURISDICTION.

A. Procedural History.

Appellant Oceanic California Inc. ("Oceanic") sought judicial review of a decision by The North Central Coast Regional Commission, affirmed by The California Coastal Zone Conservation Commission (hereinafter referred to collectively as the "Commissions"), declaring that Oceanic did not have a vested right to complete its development known as "The Sea Ranch," located in Sonoma County, California. Oceanic claimed a vested right to complete The Sea Ranch free of retroactive regulation under the provisions of the California Coastal Zone Conservation Act of 1972, California Public Resources Code §§ 27000 and following (the "1972 Act").

The trial court found that The Sea Ranch had received precise governmental approval as an integrated, unitary project eight (8) years prior to the effective date of the 1972 Act; and that Oceanic reasonably relied in good faith upon those approvals in proceeding continuously with development over that period, incurring expenditures exceeding Twenty-Six Million Dollars ($26,000,000.00). Findings of Fact in Clerk's Transcript ("CT") at pages 533-39. But the trial court concluded that such substantial reliance, over so long a period, upon precise approvals of the entire project did not protect from subsequent retroactive regulation those portions of the project not yet completed. CT 550.

[1]We will cite the opinion herein as *Oceanic, supra,* with appropriate page citations.

The California Court of Appeal affirmed (Appendix A) and the California Supreme Court denied Oceanic's Petition for Hearing (Appendix B). Oceanic's Notice Of Appeal to this Court was filed on March 11, 1977. A copy of that Notice of Appeal is attached as Appendix C.

B. Jurisdictional Ground For a Hearing In This Court.

This Court has jurisdiction pursuant to 28 U.S.C. Section 1257(2).

Oceanic contended throughout the proceedings before the Commissions, the trial court, the Court of Appeal and the Supreme Court of the State of California that Public Resources Code Section 27404 (added to the Public Resources Code by the 1972 Act), as applied to prevent it from completing development of The Sea Ranch, is repugnant to the Fourteenth Amendment of the United States Constitution in that it deprives Oceanic of its property without due process of law. When such a claim is denied by the highest state court in which review may be had, the appellate jurisdiction of this Court is properly invoked. *Cohen* v. *California,* 403 U.S. 15, 17-18 (1971); *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U.S. 282 (1921).[2]

Section 27404 of the Act provides:

> "If, prior to November 8, 1972, any city or county has issued a building permit, no person who has obtained a vested right thereunder shall be required to secure a permit from the regional commission . . . any such person shall be deemed to have such vested rights if, prior to November 8, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the

[2]In the event the Court does not consider appeal under 28 U.S.C. § 1257(2) to be the proper mode for review, Oceanic requests that this statement be regarded and acted upon as a petition for writ of certiorari pursuant to 28 U.S.C. § 2103.

development and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to the particular development or the issuance of a permit shall not be deemed liabilities for work or materials."

Following the opinion of the California Supreme Court in *Avco Community Developers, Inc.* v. *South Coast Regional Commission,* 17 Cal.3d 785, 132 Cal.Rptr. 386 (1976), the Court of Appeal in *Oceanic* construed the term "building permit" in Section 27404 to mean the permit issued as a mere *ministerial* act by a building inspector once he is satisfied that the builder will use materials and techniques required by code to insure structural integrity, diminution of fire and health hazards, and the like, rather than the discretionary approvals issued by a Planning Commission as to a project's location, site preparation, density, design and the like. This interpretation denies to land owners vested rights to proceed with development, no matter how precisely the proposed land use may have been defined and approved, and regardless of the degree of reliance upon such definition and approval, simply because a certificate totally irrelevant to the approval process has not yet issued.[3] Since the issuance of a building permit is not only a perfunctory act, but also the last act prior to the construction of improvements, the Court of Appeal's holding grants the State an option to reverse all of its planning approvals up to the eve of the actual construction of a residence. For developments such as The Sea Ranch, the construction of a residence is akin to finishing the top floor on a fifty (50) story skyscraper. (*Post,* pp. 20-21.)

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[3]The issuance of a building permit is a ministerial act. If building code requirements are met, as, for instance, the use of copper as opposed to plastic pipe for plumbing, the permit must issue. *Ellis* v. *City Council,* 222 Cal.App. 2d 490, 35 Cal. Rptr. 317 (1st Dist. 1963).

III.
THE QUESTION PRESENTED.

Can a state intentionally induce a property owner to expend tens of millions of dollars over a continuous eight (8) year development period in reasonable reliance upon precise approval of the development project and then retroactively apply a regulatory statute to stop development of that project without depriving the affected owner of its property in a manner which violates the Fourteenth Amendment of the United States Constitution?

IV.
STATEMENT OF THE CASE.

A. The 1972 Act.

The people of the State of California adopted the 1972 Act by Initiative. The 1972 Act created a regulatory structure consisting of the State Commission and six Regional Commissions to plan for coastal conservation and protection of the coastal environment during a three-year planning period. The product of this effort was to be presented to the Legislature either to be adopted as law or to serve as the foundation for other legislation. Pub. Res. Code § 27320.

During the planning period established under the 1972 Act, any person desiring to undertake "development" within a specified area adjacent to the Pacific Ocean was required first to obtain a Coastal Development Permit. Pub. Res. Code § 27400. The Commissions could issue permits for development within the "permit area" only if they could find that the development proposed would not interfere with the objectives of the plan under preparation. Pub. Res. Code § 27402, referring to Pub. Res. Code § 27302. As a practical matter, this provision meant that *no* development

could be permitted unless it was found consistent with conservation objectives *not yet articulated.* The Commissions could hardly make such findings with respect to any substantial development or large-scale project before they finished the plan—and history records that they did not do so.

Pub. Res. Code § 27404, quoted above, provided for a vested rights exemption from the permit requirements of the 1972 Act.[4] No other exemption was available. An owner of property within the permit zone became subject to additional stringent regulations under the 1972 Act regardless of the degree of precise approval previously granted by agencies of the State of California, the degree of reliance placed upon that approval and the progress made in carrying out the plan contemplated therein, unless the proposed development could fit precisely within the language of Section 27404.

At the conclusion of the planning period, the State Commission presented its plan to the California Legislature. *California Coastal Plan,* California Coastal Zone Conservation Commissions (December 1, 1975) (referred to herein as the "Coastal Plan"). The Legislature responded by enacting the California Coastal Zone Conservation Act of 1976, (Stats. 1976, chap. 1330, 1331, adding Pub. Res. Code §§ 30000 and following, referred to herein as the "1976 Act"). With minor modifications, the Legislature has kept the administrative structure in place while *continuing* the

[4]This Section provides the only exclusion from the regulatory provisions of the Act available to a private developer. In *San Diego Coast Regional Commission v. See The Sea, Limited,* 9 Cal. 3d 888, 109 Cal. Rptr. 377 (1973), the California Supreme Court fashioned an additional narrow exemption by a statutory interpretation which is not applicable here.

planning period.[5] In the meantime, under the 1976 Act, as under the 1972 Act, no person can proceed with development in a permit zone (larger under the 1976 Act than it was under the 1972 Act) without a permit—and *no* permit will be issued unless the proposed development can be justified by reference to guidelines *not yet articulated.* Pub. Res. Code §§ 30600, 30601, 30604(a).[6]

Accordingly, even if the Commissions in good faith merely sought a perfunctory review over the unfinished portion of The Sea Ranch under the 1976 Act, they could not exercise such review because there is no finalized, definitive land-use plan under the 1976 Act now, nor will there likely be one until 1981, *seventeen* (17) years after the first precise approval of The Sea Ranch as a definitive project. However, the Commissions do not seek to review the unfinished portions of The Sea Ranch under the 1976 Act; rather *they have publicly declared their intent to prevent any further development of The Sea Ranch.* Despite the

[5]On its face, many differences appear between the 1976 Act and the 1972 Act. For example, the 1976 Act purports to turn over the planning function to local government. Pub. Res. Code § 30500. But no local government can proceed until its plan has been "certified" by the Commission as consistent with goals of coastal conservation and protection. Pub. Res. Code §§ 30512-30522. This process is expected to require a period of additional planning through the year 1981. Pub. Res. Code §§ 30300, 30305.

The 1976 Act purported to abolish regional commissions, providing for their reconstitution only in the event that they were required to assist the State Commission with its workload. Pub. Res. Code § 30304.5. The Regional Commission (and other regional commissions) were "reconstituted" almost immediately. In fact they were never disbanded, maintaining offices, staffs and payrolls continuously through the period during which the State Commission was supposedly considering whether or not it could get along without them.

[6]Pub. Res. Code § 30608 provides for continuation of a vested rights exemption using language substantially similar to that of Pub. Res. Code § 27404. A development exempt from the 1972 Act upon constitutional grounds is also exempt from the 1976 Act unless the exemption has been lost by abandonment, etc.

lack of a final, definitive plan for coastal regulation, the Commissions have stated that they view Oceanic's plan for completion of The Sea Ranch as inconsistent with (i) the Coastal Plan, (ii) the Commissions' view of their mission, (iii) their interpretation of the 1972 Act; and (iv) their interpretation of the 1976 Act.[7] In short, the Commissions seek to use the 1976 Act as they used the 1972 Act, as a device to revoke all of the approvals previously granted for The Sea Ranch while retaining at no cost to the public and enormous loss to Oceanic (as well as to members of the public with whom it has dealt in good faith) all of the benefits, public dedications and the like provided by Oceanic to fulfill conditions of the approvals granted.

B. The Sea Ranch Development And The Approvals Granted For It.

The Sea Ranch encompasses approximately fifty-two hundred (5,200) acres, bounded on the west by the Pacific

[7]See, for example, I State Coastal Reporter No. 13, page 12 (October 23, 1973); I State Coastal Reporter No. 14, pages 4-5 (November 9, 1973); I State Coastal Reporter No. 19, pages 13-15 (January 16, 1974); I State Coastal Reporter No. 21, pages 2-3 (February 11, 1974); I State Coastal Reporter No. 23, pages 1-6 (March 18, 1974); I State Coastal Reporter No. 25, pages 17-20 (April 22, 1974); II State Coastal Reporter No. 2, pages 7-8 (June 25, 1974). I State Coastal Reporter No. 14, pages 4-5 reports a strong public statement by the Chairman of the State Commission, speaking for the Commissions, in response to criticisms from the Governor declaring the intent of the Commissions to prevent development of The Sea Ranch at the levels approved by the County of Sonoma. That statement, made in November of *1973*, prior to Oceanic's application for exemption and three (3) years prior to presentation of the Coastal Plan to the California Legislature, demonstrates the extreme bias of the Commissions. In short, they had decided to "stop The Sea Ranch" before the planning process had fairly begun. Thus, Oceanic's right to be free of the regulation raises a serious question which cannot be answered by simply observing that if the plan for The Sea Ranch evidences the sensitive concern for environmental considerations which the County and Oceanic built into it from 1964 onward, then the Commissions would permit development to proceed. See *Urban Renewal Agency* v. *California Coastal Zone Conservation Commission*, 15 Cal.3d 577, 125 Cal.Rptr. 485 (1975).

Ocean, on the east roughly by the first ridge line, on the north by the mouth of the Gualala River (which also forms the boundary between Sonoma and Mendocino Counties) and on the south by a boundary approximately ten (10) miles southerly of the mouth of the Gualala River, running from the ocean to the ridge. CT 532. Oceanic purchased the property to develop it " 'as an integrated whole under a planned community concept offering for sale to the public a choice of condominium units, residential cluster development constructed by Oceanic or by third parties, and subdivided lots which Oceanic would prepare for construction of single-family dwellings by the purchasers under a restrictive and particularized plan of architectural control.' " *Oceanic, supra,* 63 Cal.App.3d 62-63; 133 Cal.Rptr. 667. (Quoting from the findings of the trial court).

In 1964, Oceanic obtained planned community zoning for the southerly eighteen hundred (1,800) acres of The Sea Ranch. The application was supported by an intensive analysis of the land, including studies of soils conditions, vegetation, wind, weather and precipitation, erosion control and range management. These studies were presented as part of Oceanic's zoning application, and became a part of the approval subsequently granted, for the express purpose of requiring control of all human activities on The Sea Ranch by precise constraints, applicable to the entire property, to achieve the goals of a precise plan of use and environmental protection. *Oceanic, supra,* 63 Cal.App.3d at 63; 133 Cal.Rptr. at 667.

The controls imposed by the County in 1964 included (i) locating each lot by reference to environmental constraints, (ii) restricting the buildable area on each lot by scenic easements, view corridors and other restraints, (iii) controlling size, weight, bulk, exterior appearance (down to the color and composition) of all structures, (iv) restricting plantings to indigenous species, and (v) requiring pres-

ervation of open space on all lots and common areas in their natural states. Oceanic commenced development under these controls in 1964.[8]

The initial approval applied to the southerly eighteen hundred (1,800) acres of The Sea Ranch. Many of the studies and analyses presented to support the initial zoning approval applied to The Sea Ranch as a whole, however. With its first planned unit development application, Oceanic demonstrated that it would have sufficient utility service and governmental infrastructure to carry through completion of The Sea Ranch as a whole on the full fifty-two hundred (5,200) acres, for the full fifty-two hundred (5,200) units. CT 539. Among other things, in 1964 Oceanic (i) obtained a permit to appropriate water from the Gualala River sufficient to serve fifty-two hundred (5,200) units

[8]CT 537. Many of these controls are implemented through a declaration of covenants referred to by the parties as The Sea Ranch Restrictions. The role of The Sea Ranch Restrictions as a development control device is described in the Reporter's Transcript ("RT") 76-97; 164-165; 179-80 and 185. The Commissions have admitted that The Sea Ranch Restrictions provide for precise definition of improvements to be placed upon lots at The Sea Ranch controlling siting of each building, exterior appearance as well as the size thereof. The Commissions made The Sea Ranch Restrictions a part of the overall conditions upon which permits would be granted to lot owners for construction of houses on lots purchased from Oceanic. In adopting the overall conditions based in large part upon The Sea Ranch Restrictions, the Regional Commission stated:

> "These overall conditions represent a complete, thoughtful and considered analysis of those issues which must be addressed to enable granting of permits during the Commissions' planning. *All owners of single-family lots at The Sea Ranch who intend to build during this period may confidently act in reliance upon these conditions.* This statement is intended to remain permanent during the planning period . . ." (Emphasis in original)

Vol. I, *State Coastal Reporter* No. 23, page 3 (March 18, 1974). In the State Courts, the Commissions argued that The Sea Ranch Restrictions were too vague to constitute a precise approval by the County of Sonoma of improvements to be placed on lots at The Sea Ranch and whether vague or precise, they could not form a proper basis for reliance as a matter of law.

(Administrative Record ("AR") 327-28) (ii) incorporated a public utility company to provide utility services for the project, and (iii) endowed a homeowners' association with sufficient quasi-governmental power to perform the necessary administrative functions required to service the area.[9]

The Sea Ranch is located in a remote rural area. Oceanic had to demonstrate the ability in 1964 to provide essential services from scratch. RT 162-64. For these and for other reasons, the County approved planned community zoning in 1964 for eighteen hundred (1,800) acres, with knowledge that Oceanic intended to develop the entire fifty-two hundred (5,200) acres in accordance with the initial concept. CT 533.

In 1968, Oceanic obtained planned unit development zoning for the balance of The Sea Ranch. CT 537. The County viewed this zoning as an application of the zoning concepts and land use constraints embodied in the 1964 zoning. CT 537. RT 42-44, 48-49.

In 1972, the County adopted a general plan for the portion of the County in which The Sea Ranch is located and a specific plan for The Sea Ranch in order to respond to the requirements of a revised State Planning Act. California Government Code §§ 66474, 66474.5. *Oceanic, supra,* 63 Cal.App.3d at 63, 133 Cal.Rptr. 667. The specific plan restates the planning criteria approved pursuant to the 1964 and 1968 planned community zoning. Moreover, it locates all of the single-family residential lots then remaining within the boundaries of the Commissions' permit jurisdiction. It required that The Sea Ranch Restrictions be made applicable to each subdivision subsequently approved

[9]The Regional Commission declared final subdivision work in Units 35A, 35B and 35C exempt in June of 1973 (CT 542). Tentative subdivision maps and improvement contracts had been approved prior to the effective date of the Act. The exemption did not include the right to construct residences on those lots.

at The Sea Ranch and it precisely depicted all of the areas previously subdivided. In short, the specific plan provided an exact land-use plan for future development in accordance with the precise criteria laid down in the past, including criteria which precisely detail the structures permitted to be built on each lot. CT 536, 538-39. *Oceanic, supra,* 63 Cal.App.3d 63-64, 133 Cal.Rptr. 667-68.

As part of the initial approval, Oceanic was required to assure public access to the Coast. The County and Oceanic agreed upon dedication of a one hundred twenty (120) acre park which Oceanic deeded to the County in 1969. The instrument of conveyance recites that the park was dedicated to provide public recreational use of the coast pursuant to an overall land-use plan for The Sea Ranch as a unitary development. See AR 2243, 2245.

C. The Sea Ranch As Of The Effective Date Of The 1972 Act.

As of the effective date of the 1972 Act, The Sea Ranch consisted of two thousand (2,000) fully developed lots with another one hundred fifty (150) lots approved for development. CT 542, 545, AR 2077. Substantially all land lying within the permit zone was finally plotted and either sold, dedicated to the public or set aside as common area open space.

Of the more than two thousand (2,000) lots, condominiums and cluster units shown on final subdivision maps, more than fifteen hundred (1,500) had been sold to members of the public. CT 545. Purchasers of lots had constructed three hundred fifty (350) residences. CT 545. Oceanic had constructed a lodge, store and post office facility as well as recreational amenities, including tennis courts, swimming pools and a golf course. CT 545. The recreational amenities had been conveyed to The Sea Ranch Association

and The Sea Ranch Association had constructed other amenities. Oceanic had permits to construct three (3) wastewater treatment plants and had undertaken construction of two (2) of the plants. It had completed arrangements for utility services for all of the units and had expended Twenty-Six Million Nine Hundred Thousand Dollars ($26,900,000.00) in direct project expenditures. *Oceanic, supra,* 63 Cal.App.3d at 64, 133 Cal.Rptr. 667-68.

The trial court found that all of this work had proceeded in direct and reasonable reliance upon precise approval by the County of a plan for development of the entire Sea Ranch as an integrated and unitary whole. CT 533.

D. The Portions Of The Sea Ranch Yet To Be Completed As Of The Effective Date Of The Act: The Vested Right Oceanic Seeks.

The initial plan for The Sea Ranch, approved as an integrated whole, provided for five thousand two hundred (5,200) units. Oceanic seeks the right to complete the development as approved.

Such a vested right includes four rough categories of development work:

(a) The first category is the right to construct single-family residences on all lots either finally platted on the effective date of the 1972 Act or where the final subdivision work has been declared exempt from the 1972 Act by the Regional Commission.[10] Single-family residences may

[10]The Commissions relied in large part upon cases such as *Hill* v. *City of Manhattan Beach,* 6 Cal.3d 279, 98 Cal.Rptr. 785 (1971), and *Gisler* v. *County of Madera,* 38 Cal.App.3d 303, 112 Cal.Rptr. 919 (5th Dist. 1974), both of which hold that a property owner acquires no vested right to utilize a lot simply because it is shown on a subdivision map. But in both of these cases, the government agency which had approved filing of the original map did not grant an approval for specific improvements to be constructed on the lot. The record in this case shows that the County of Sonoma had

be constructed on such lots by complying with The Sea Ranch Restrictions and the Sonoma County Building Code. CT 537, 540-41. Because of The Sea Ranch Restrictions and the other constraints applicable to development at The Sea Ranch, a Sea Ranch lot is useful for no purpose other than construction of a specific type of single-family residence generic to The Sea Ranch.

(b) The second category is the right to construct improvements on lots or parcels shown on filed maps predating or exempt from the 1972 Act, where, in addition to approval under the Sonoma County Building Code and The Sea Ranch Restrictions, the County reserved additional architectural and siting control (a reservation general to condominium and multi-family use).

(c) The third category is the right to complete subdivision improvement work, file final maps and construct improvements in areas which have been tentatively mapped under the California Subdivision Map Act as of the effective date of the 1972 Act. Recognition of vested rights in this category would include the right to utilize the lots, as in the first two categories referred to above. Under California law, approval of a final map, which conforms to the approved tentative map, is a ministerial act. *Great Western Savings & Loan Assn.* v. *City of Los Angeles,* 31 Cal.App.3d 403, 107 Cal.Rptr. 359 (2nd Dist. 1973).

(d) The fourth category includes the right to carry out the development plan with respect to those portions of the project where the plan has not been reduced

(Continued)

through a combination of zoning and subdivision approvals created controls so specific as to lots at The Sea Ranch that all use of the lots was determined down to the exterior appearance, color and composition of the improvements which could be constructed and identification of specific species of vegetation which could be planted thereon, all others being prohibited.

to tentative planning or specific delineation of parcels on The Sea Ranch specific plan. Most of this area lies outside of the permit zone created by the 1972 Act, although it lies within the Commissions' claimed permit jurisdiction under the 1976 Act. Oceanic's claim with respect to this category of property and the category described in subparagraph (b) above also raises an issue of tolling.[11]

RAISING THE CONSTITUTIONAL ISSUE

Oceanic raised the constitutional issue at the outset of its exemption application before the Regional Commission AR 15. It reiterated its claim in its Petition for Writ of Mandate in the trial court. CT 5. The Constitutional argument provided the cornerstone for Oceanic's argument before the California Court of Appeal (Appellant's Opening Brief, pages 64 through 104) and its Petition for Hearing before the California Supreme Court (Petition For Hearing, pages 20 through 28).

Oceanic argued that Public Resources Code § 27404 could be applied to The Sea Ranch in a manner consistent with the Fourteenth Amendment of the United States Constitution *only* if the term "building permit," as used in that Section, was construed in a broad, descriptive sense to mean permission for construction and development of a definitive project. The California courts have rejected that argument.

[11]While the Commissions have claimed jurisdiction to stop development of The Sea Ranch and while the issue has been fought out in these proceedings at the administrative and judicial level, development has necessarily stopped. The Commissions now contend that they are entitled to the benefits of that delay, whatever the outcome of this case. In dealing with any of the vested rights claims which Oceanic has raised, the Court must also settle the question of whether or not any vested rights originally possessed have been lost through the passage of time consumed by the administrative and judicial proceedings. See *Oceanic, supra,* 63 Cal.App.3d 74-75, 133 Cal.Rptr. 674.

Instead, they have construed the term strictly as applying solely to the permit issued by the municipal officer charged with responsibility for insuring that buildings meet structural and fire safety requirements. Conferring such status upon a mere ministerial act is repugnant to the Constitution of the United States.

THE FEDERAL QUESTION PRESENTED BY THIS CASE IS SUBSTANTIAL

The substantial federal question directly raised by this case is simply this: may the State grant a precise series of development approvals, specifically contemplating major work under a rigid plan of development control, induce reasonable reliance upon those approvals over an eight (8) year development period by the developer and members of the public to whom the developer offers its product, require expenditures of tens of millions of dollars, formation of public utility companies, dedication of major park areas, construction of major recreational facilities, creation of wide areas of open space and then repudiate the plan without violating the constitutional rights of those who have reasonably relied upon it? Oceanic respectfully submits that this is a vital federal question which must be answered in the negative.

The question is particularly timely for two reasons: First, this Court has not addressed the issues raised by a claim of vested rights to a nonconforming use under local land-use regulation since *Reinman* v. *Little Rock,* 237 U.S. 171, 59 L. Ed. 900, 35 S. Ct. 511 (1915) and *Hadacheck* v. *Sebastian,* 239 U.S. 394, 70 L. Ed. 348, 36 S. Ct. 143 (1915). These cases were decided before comprehensive land-use regulation became the rule rather than the exception. The passage of time, coupled with the increasing importance and more

restrictive nature of land-use regulation would justify re-examination of this important question of itself.

But there is an additional, urgent reason for re-examination of the issue. The fundamental nature of land-use regulation has changed. See, *e.g.*, Bosselman, *The Quiet Revolution In Land Use Control* (Council on Environmental Quality, 1971). Land-use control has evolved away from a *general* pattern of permitted uses. It has become a system of response to specific proposals. Specific developments are examined on an individual basis with reference to a specific parcel of property. If permitted, the development is subjected to specific controls, requiring service to the public interest by specific dedication of specific considerations the public desires from the specific property owner but cannot afford to purchase outright. The Coastal Plan itself is replete with policies the State Commission hopes to implement in exactly this manner. See also Bosselman, Feurer and Siemon, *The Permit Explosion* (Urban Land Institute 1976). Such a procedure is not merely pregnant with enhanced opportunity for estoppel; *inducing reliance becomes an express and intended instrument of policy.*

In *Euclid* v. *Ambler Realty Co.,* 272 U.S. 365, 71 L. Ed. 303, 47 S. Ct. 114 (1926) this Court noted that concepts of the police power must be evaluated in terms of their response to contemporary conditions. We respectfully submit that the time has come for this Court to re-examine the concept of vested rights in the light of the contemporary land-use control process which is not "zoning" in the traditional sense. In this case, it constituted site-specific analysis of a specific development proposal for specific property, with the development approved as a whole in a manner which induced massive reliance, not only by a developer, but by those with whom the developer has dealt in good faith over a period of eight (8) years.

A claim of vested rights raises a substantial due process question under the Fourteenth Amendment of the United States Constitution. The measure of vested rights turns upon questions of fundamental fairness in context. Where, as here the contemporary land-use approval process has provided all elements of an estoppel, requiring the issuance of a building permit, a mere ministerial act, as a *sine qua non* for a vested right is inequitable as well as irrelevant.

ARGUMENT

I. Oceanic Claims A Vested Right To Complete Development Of A Nonconforming Use: The Right To Complete And Maintain Nonconforming Uses Against Retroactive Police Power Regulation Is A Right Protected Under The Fourteenth Amendment Of The United States Constitution.

A. A So-Called "Vested Right" To Complete A Development As Against Subsequent Regulation Applies The General Principle That Land Use Regulations Cannot Require Immediate Removal Of Established, Nonconforming Uses.

Unless a zoning ordinance allows reasonable and fair continuation of nonconforming use, it violates the user's right to due process of law. *E.g. Jones* v. *City of Los Angeles,* 211 Cal. 304, 295 P. 14 (1930); *Shifflett* v. *Baltimore County,* 247 Md. 151, 230 A.2d 310 (1967); *Harbison* v. *City of Buffalo,* 4 N.Y.2d 553, 176 N.Y.S.2d 598, 152 N.E.2d 42 (1958); *City of Seattle* v. *Martin,* 54 Wa.2d 541, 342 P.2d 602 (1959). When a nonconforming use has been fairly started under a prior approval, it is treated as an accomplished fact as against the subsequent regulation.

Professor Anderson has collected the authorities from all jurisdictions dealing with the question of when a non-conforming use is considered established. He has discussed

them exhaustively in 1 American Law of Zoning, Sections 6.20-6.31, pages 398 through 434 (2d Ed. 1976) and it would add undue length to this brief to cover the same ground. As he notes, most jurisdictions hold that a property owner acquires a vested right to complete construction which has begun upon the basis of a valid permit issued and relied upon in good faith prior to enactment of the prohibitive zoning ordinance. *E.g. Phoenix City Council* v. *Canyon Ford, Inc.,* 12 Ariz. App. 595, 473 P.2d 797 (1970); *Dingeman Advertising Inc.* v. *Algoma Township,* 393 Mich. 89, 223 N.W.2d 689 (1974); *Hillsborough* v. *Smith,* 276 N.C. 48, 170 S.E.2d 904 (1969); *Twin Rocks Watseco Defense Committee* v. *Sheets,* 15 Or. App. 445, 516 P.2d 472 (1973); *Gallagher* v. *Building Inspector,* 432 Pa. 301, 247 A.2d 572 (1968); *A. Ferland & Sons, Inc.* v. *Zoning Board Of Review,* 105 R.I. 275, 251 A.2d 536 (1969).

But the critical question is: what has been permitted? If the measure is estoppel, then the precision of the permit, the intent to induce reliance and the degree of reliance induced are the critical criteria. The *type* of permit should not be a controlling factor.

B. The Basic Measure Of Vested Rights Is Equitable Estoppel, The Standard Of Reasonableness Which Is The Primary Root Of Due Process.

Almost all of the foregoing cases require that the property owner base his claim for vested rights upon a building permit. But the cases deal with factual situations in which there is *no specific approval* of the intended project by a public body *prior* to issuance of the building permit. For example, in *Anderson* v. *City of Pleasant Hill,* 229 Cal. App.2d 79, 40 Cal.Rptr. 41 (1st Dist.), *hearing denied* (1964), the California Court of Appeal observed that vested rights depend upon an equitable estoppel and "where no

such (building) permit has been issued, it is difficult to conceive of any basis for such estoppel." 229 Cal.App.2d *supra* at 89, 40 Cal.Rptr. *supra* at 45. *Humble Oil & Refining Co.* v. *Worthington,* 49 Misc.2d 432, 267 N.Y.S.2d 794 (1966), is another case similar to *Anderson* in which the Court requires a building permit but states that equitable estoppel is the principle upon which a claim of vested rights must be based. [12]

Under the new approach to land-use regulation exemplified by the record in this case, the rationale for the building-permit approach no longer applies. It is not difficult "to conceive of a basis for estoppel" on the record here, to paraphrase *Anderson.* When the government approves an entire, large-scale project as a unified whole, it knows that commencement of work on the first phases (particularly when that work includes provision of essential utility work, creation of quasi-governmental facilities and dedication of recreational open spaces for the needs of the project as a whole) is tantamount to construction of the foundations and

[12]Professor Krasnowiecki puts the building permit requirement into proper perspective. Krasnowiecki, "Legal Aspects Of Planned Unit Residential Development," *Technical Bulletin* 52, page 56 (Urban Land Institute 1965):

> "Traditionally, of course, the courts have been reluctant to tie the hands of government in favor of an individual who acts on the faith of an understanding that the law will not be changed to prevent completion of his project. The reluctance is based on a consideration of the damage that might be done if government, having allowed a project to go ahead, could not thereafter change its mind to protect the public interest. This view of the matter might have been compelling at an earlier age, when the points of contact between government and individual were relatively few. Today, however, almost every private activity comes in contact with government regulation; and many of these activities are themselves charged with a strong public interest. . . . the public advantage that may accrue from allowing the public authority to dishonor an approved plan . . . must, surely be balanced against the damage that may be done to an overriding public interest in better housing [and better planning] . . ." *Id.* at 56-57.

lower floors of a highrise building under a building permit. Revocation of the right to complete the one is no more permissible in equity than revocation of the right to complete the other.

Several authorities from jurisdictions other than California have supported the idea that a claim of vested rights may be based upon estoppels created by specific approvals other than building permits.[13]

All of these cases state that a specific approval for a project reasonably relied upon by a property owner cannot be revoked by retroactive regulation without doing violence to the requirements of equity and due process. *Oceanic* and *Avco Community Developers* v. *South Coast Regional Commission,* 17 Cal.3d 785, 132 Cal.Rptr. 386 (1976) illustrate that such appeals to equity do not persuade the California Courts; and Professor Anderson's treatise cites other authorities which appear to adopt California's approach.

Oceanic contends that the sharp split of authority demonstrated by these cases requires resolution by this Court. And if the test of constitutionality is one which takes into account principles of equitable estoppel and overall reasonableness, then the building permit rationale will be rele-

[13]These authorities are *DeKalb County* v. *Chapel Hill, Inc.,* 232 Ga. 238, 205 S.E.2d 864 (1974); *River Forest State Bank* v. *Village of Hillside,* 6 Ill.2d 451, 129 N.E.2d 171 (1955); *Gruber* v. *Mayor and Township Committee of Raritan,* 39 N.J. 1, 186 A.2d 489 (1962); *Ward* v. *City of New Rochelle,* 20 Misc.2d 122, 197 N.Y.S.2d 64 *aff'd,* 9 App. Div.2d 911, 197 N.Y.S.2d 128, *aff'd,* 8 N.Y.2d 895, 204 N.Y.S.2d 144, 168 N.E.2d 821 (1960); *Telimar Homes, Inc.* v. *Miller,* 14 App. Div.2d 586, 218 N.Y.S.2d. 175 (1961); *Elsinore Property Owners Assn., Inc.* v. *Morwand Homes, Inc.,* 286 App. Div. 1105, 146 N.Y.S.2d 78 (1955); *Clackamas County* v. *Holmes,* 265 Or. 193, 508 P.2d 190 (Oregon 1973); *Appeal of Diamond,* 413 Pa. 379, 196 A.2d 363 (1964); *Wood* v. *North Salt Lake,* 15 Utah 2d 245, 390 P.2d 858 (1964); *Board of Supervisors of Fairfax County* v. *Cities Service Oil Company,* 213 Va. 359, 193 S.E.2d 1 (1972); *Board of Supervisors of Fairfax County* v. *Medical Structures, Inc.* 213 Va. 355, 192 S.E.2d 799 (1972).

gated to its proper place. *A building permit may or may not be the proper measure of vested rights depending upon the facts in each case.* It is not proper in this case.

As land-use regulation gravitates more and more toward site-specific constraints imposed to achieve public objectives in furtherance of environmental preservation and aesthetics and to implement requirements that private property owners dedicate open space and recreational facilities for public use, estoppel can arise far earlier than the building permit stage. It is inequitable in the extreme for the public to impose such restraints, exact such requirements, take such dedications, induce massive reliance over long periods of time and *then* claim the right to revoke the approval in the name of a *revised* perception of the public interest, by claiming that no right has vested merely because of the lack of a piece of paper which would be issued of course in the exercise of a ministerial function.

II. Modern Land Use Control Procedures Employ Specific Approvals And Induce Reliance As A Conscious Instrument Of Policy. The Decision Below Sanctions Governmental Repudiation Of Specific Approvals Which Were Intended To And Did Induce Reliance. Such An Inequitable Result Violates The Fundamental Obligation Of Fairness Required Under The Due Process Clause Of The Fourteenth Amendment.

The form of land-use control exemplified by the record in this case seeks to achieve three general objectives: (i) more control over design to achieve public objectives in the aesthetics of structures and their placement on the land; (ii) more efficient use of the land for management of open space, public utility systems and mixing of compatible uses, and (iii) dedication of desired open space and other public facilities specifically designed to meet the needs of the area in which the development will be located. Such regulation is

most efficient in achieving the objectives when it applies to a large parcel for development under unified control.

This process requires a precise development plan, approved at the outset, with the general understanding that the project will be carried through to completion in order to achieve the public objectives. Private property owners will not engage in the costly planning and dedication procedures required by this form of land-use regulation unless they perceive this to be the intent of the regulation. A governmental reservation of a right to change the plan after it has been approved and relied upon will totally discourage the employment of these sophisticated and desirable planning techniques for the simple reason that such a reserved right would put the large initial outlays required to undertake development under such planning constraints at risk of a whimsical shift in public sentiment throughout the entire life of the development. Nobody who knows that these are the rules will play the game.[14]

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[14]See Heyman, *Frontiers Of Planned Unit Development: A Synthesis Of Expert Opinion*, 156 *et seq.* (Center For Urban Policy Research, Rutgers University, 1973):

> ". . . you cannot have large-scale planned unit development unless the developer is guaranteed at the outset that if he meets stipulated conditions . . . he will be permitted to build out roughly as originally intended."

Krasnowiecki, "Legal Aspects Of Planned Unit Residential Development," *Technical Bulletin* 52, page 56 (Urban Land Institute 1965):

> ". . . obviously there can be nothing more discouraging to such outlay [the capital outlay required for planned unit development] than the existing uncertainty whether the plan of development, once approved, will thereafter be honored by the public authority.
>
> ". . . the position of the developer who acts in reliance upon local government representations has been left in a deplorable state of uncertainty. This uncertainty cannot but work to the detriment of the quality of housing in general. . . . no one will readily shoulder the initial expense of such a departure [from conventional layout] only to find that it has been wiped out in a change in all the relevant requirements . . ."

Oceanic cited numerous authorities to the Commissions and the California courts explaining the nature of the change in land-use regulation and how that change results in the creation of reliance upon specific plans by public and private parties alike to achieve desired public objectives. These authorities establish beyond question that conduct sufficient to create a pattern of estoppel has become a conscious instrument of public policy.[15] Indeed, while Oceanic's case was pending before the Court of Appeal, its arguments, based on the nature of the land-use control process, received emphatic support from a most unlikely source—*the Coastal Plan itself*.

The Coastal Plan states that its objectives can only be achieved by exacting concessions from private property owners in exchange for development approvals. The concessions to be exacted in exchange for the approvals are fairly prosaic. They include specific site design (Coastal Plan, pages 7, 8, 78), special treatment of sensitive utilities such as water, sewer and transportation, and the requirement that coastal developers dedicate open space (*id.* at 52-53, 77-78), recreational areas and areas which are particularly sensitive for ecological reasons. *Id.* at 152-54. The Commissions obviously do not intend to be estopped by such approvals, however. In short, they expect to exact such concessions in exchange for ephemeral approvals which they reserve the right to revoke at a later time in response to a new perception of the public interest. Presumably, they will keep this intent a secret. For if they disclose it, no property owners will cooperate with them and the Coastal Plan will not be implemented.

[15]We will not restate those arguments at length in this Jurisdictional Statement. Among those authorities are the following: Burchell & Hughes, *Notes From Planned Unit Development: New Communities American Style*, page 36. (Center For Urban Policy Research, Rutgers University, 1972); Harr, *Law And Land, Anglo-American Practices*, 14 (Cambridge, Massachusetts; Harvard and M.I.T. Press, 1965); Heyman, *Frontiers Of Planned Unit Development: A Synthesis Of Expert Opinion*, 156 *et seq.* (Center For Urban Policy Research, Rutgers University, 1973); Krasnowiecki, "Legal Aspects of Planned Unit Residential Development," *Technical Bulletin* 52, page 56 (Urban Land Institute 1965); Marcus and Groves, *The New Zoning*, 23 (1970); Sternlieb, Burchell & Hughes, *Planned Unit Development: Theoretical Approaches, Evolutionary Framework* (Center For Urban Policy Research, Rutgers University, Exchange Bibliography No. 256, undated).

As a crowning irony, the Commissions acknowledge that they will lose their power to second-guess development when a building official who is totally divorced from the land-use control process issues a certificate of probable non-collapse with respect to a structure built in the development approved—with the exemption strictly limited only to the structure so approved. In short, the Commissions argue for a test of vested rights which would reserve to the public authority the right to repudiate sound and precise commitments in a manner which would be nothing short of fraudulent between private parties. They claim this right in the name of some higher public interest which overrides considerations of fairness and equity. But then they acknowledge a limitation on this sweeping power by reference to a totally arbitrary event which has no rational relationship to the process to which the public policy relates.

"Men naturally trust in their government, and ought to do so, and they ought not to suffer for it." *Menges* v. *Dentler*, 33 Pa. 495, 500 (1859) cited in Berger, *"Estoppel Against The Government,"* 21 Univ. Chi. L.R. 680 (1953-54). Unless governments protect that trust:

> "... every man is bound to question every act of government that affects him, and to resist whatever he does not approve—a doctrine that would make government impossible." *Menges* v. *Dentler*, 33 Pa. *supra* at 500, cited in Berger, 21 Univ. Ch. L.R. *supra* at 705.

Professor Berger concludes:

> "Repudiation of representations is dirty business, no less at the hands of the government than of its citizens. Hence, the claim of immunity for governmental repudiation is tolerable only to the extent that it rests on inescapable compulsions arising out of the needs of government." Berger, *supra* at 707.

He finds such "inescapable compulsion" only where the repudiated representation deals with a matter beyond both the apparent and real authority of the representing agency. Even here, he would sharply limit the power of repudiation.

> "... [A] democratic government which rests on consent of the governed should take care in every part of the system, as Daniel Webster said, 'not only to do right, but to satisfy the community that right is done.' To preserve confidence in popular government is of higher importance than to avert occasional frauds." Berger *supra* at 684, citing 5 Writings and Speeches of Daniel Webster at 163, quoted by Mr. Justice Frankfurter, concurring in *Joint Anti-Fascist Committee* v. *McGrath*, 341 U.S. 123, 149, 172 footnote 19, (1951).

A government which employs induced reliance as a *conscious instrument of policy* should be compelled to adhere to the actions which induced the very commitments the government initially sought to obtain. The concept of fundamental fairness embodied in the due process clause of the Fourteenth Amendment demands nothing less.

Such a rule imposes no great burden upon government. A government which does not wish to be estopped need only say so openly, expressly reserving the right to change its mind in circumstances where a reasonable person might reach a contrary conclusion. Private persons live with such a requirement in all of their dealings with each other and suffer no great strain. A government which wishes to

change its mind after being estopped can terminate nonconforming use by condemnation or through provision of amortization periods, formalized avenues for orderly revision of policy where previous policy has coalesced into accomplished development. In short, the rule enunciated by the California Courts in *Oceanic* and *Avco* sanctions the exercise of a power both overbroad and arbitrary to serve no compelling governmental need.

CONCLUSION

If the State of California, on the pretext that one final ministerial act (the issuance of a building permit) had not yet been performed, is permitted to revoke retroactively precise, specific and complete approval of The Sea Ranch after Oceanic has reasonably relied upon those approvals over an eight (8) year period at a cost of Twenty-Six Million Dollars ($26,000,000.00), the result will not only deprive Oceanic of a vested property right without due process of law, it will forever prevent the use of socially and environmentally desirable land use planning procedures in the State of California and elsewhere.

For these and all of the foregoing reasons, the Court should note probable jurisdiction in this case pursuant to 28 U.S.C. Section 1257(2).

Dated: March 16, 1977.

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APPENDIX A

IN THE

Court of Appeal of the State of California
First Appellate District—Division One

OCEANIC CALIFORNIA INC.,
Plaintiff, Appellant and Respondent,

v.

THE NORTH CENTRAL COAST REGIONAL COMMISSION and THE CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION,
Defendents, Respondents and Appellants.

NATURAL RESOURCES DEFENSE COUNCIL, INC. and CALIFORNIA COASTAL ALLIANCE, INC.,
Intervenors and Respondents.

1 Civil 37893
Sup. Ct.
No. 680-724

Appellant, a land developer, has appealed from a judgment that denied its petition for a writ of administrative mandamus in which it sought, among other relief, a judgment that it was entitled to an exemption from the provisions of the California Coastal Zone Conservation Act of 1972 (Pub. Resources Code, § 27000 et seq.) to the full extent requested in its application (see 14 Cal. Admin. Code, §§ 13700-13707; and State of California v. Superior Court [Veta Company] (1974) 12 Cal.3d 237, 249-250) that had been denied by each of respondent commissions. The respondent commissions have filed a cross-appeal in which they seek review of rulings of the court with respect to the admission of evidence and settlement of the findings.

Petitioner concedes that it has not secured a building permit, as required by the provisions of section 27404 of the Public Resources Code.[1] It contends that under the particular circumstances of this case, a sequence of approvals and actions taken pursuant to a planned unit development zoning approval, it acquired a vested right to complete the development; and that, therefore, section 27404 should be construed in a manner which would recognize the developer's vested right, or it should be disregarded on the grounds that it is not the exclusive statutory measure of rights under the Coastal Act, or it should be voided on the grounds it is unconstitutional as applied to this development. As is noted below the principle predicates upon which the developer's contentions must rest have been advanced and refuted in the recent decision in *Avco Community Developers, Inc.* v. *South Coast Regional Com.* (1976) 17 Cal.3d 785, as modified 18 Cal.3d at p. ..... There are some factual differences in the two cases, and further arguments have been advanced in this case. Nevertheless, we do not find them controlling. The judgment must be affirmed.

The affirmance of the judgment renders it unnecessary to consider the commissions' protective appeal. We, therefore, do not determine the delicate question of whether the determination of whether a vested interest exists, as distinguished from the question of the rights appertaining to such

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[1]Section 27404 provides:

"If, prior to November 8, 1972, any city or county has issued a building permit, no person who has obtained a vested right thereunder shall be required to secure a permit from the regional commission; providing that no substantial changes may be made in any such development, except in accordance with the provisions of this division. Any such person shall be deemed to have such vested rights if, prior to November 8, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to the particular development or the issuance of a permit shall not be deemed liabilities for work or material."

an interest, requires the exercise of independent judgment by a court reviewing an administrative decision, or merely a determination that there is substantial evidence in the light of the whole record to sustain the administrative finding. (Code Civ. Proc., § 1094.5, subd. (c). Cf. *Mobil Oil Corp.* v. *Superior Court* [Air Pollution Control District of San Diego County] (1976) 59 Cal.App.3d 293, 304-305 [hg.den. Sept. 8, 1976], with *Transcentury Properties, Inc.* v. *State of California* (1974) 41 Cal.App.3d 835, 844; and note *Avco Community Developers, Inc.* v. *South Coast Regional Com., supra,* 17 Cal.3d at p. 796, fn. 7; and *Aries Dev. Co.* v. *Coastal Zone Conservation Com.* (1975) 48 Cal.App. 3d 534, 545.) Nor do we determine whether the trial court erred in receiving testimony which was not presented to the commissions. (See § 1094.5, subd. (d).) As noted below, the conclusions of law and the judgment of the trial court are consistent with or control the adverse findings attacked by the commissions. The affirmance also renders it unnecessary to consider whether or not the developer in fact complied with the zoning ordinance, or, if not, whether the "P-C District" zoning may be attacked at this late date.

The findings furnish the following general outline of the facts. The developer "Oceanic" purchased approximately 5,200 acres on the northern Sonoma County coast in 1963 "to develop the property as an integrated whole under a planned community concept, offering for sale to the public a choice of condominium units, residential cluster development constructed by Oceanic or by third parties, and subdivided lots which Oceanic would prepare for construction of single-family dwellings by the purchasers under a restrictive and particularized plan of architectural control."

In 1964 the developer applied for planned community zoning for the southerly 1,800 acres and prepared and presented to county authorities analyses of soil conditions, of patterns of vegetation, of wind, of weather and of precipita-

tion, a program of forest management, and a series of development constraints embodied in "The Sea Ranch Restrictions," requiring all man-made improvements to preserve the environmental considerations. These studies, analyses and exhibits in many cases pertained to and affected the entire 5,200 acres and were not in every case restricted to the 1,800 acres involved in the application. The county planning commission and the board of supervisors approved the planned community zoning for the 1,800 acres with knowledge that the developer intended to develop the entire 5,200 acres in accordance with the concept as approved.

Thereafter, the developer commenced actual development on an incremental basis, applying to the county for subdivision map approval for single family residential lot developments, and for use permit approvals for condominiums and other types of developments.

In 1968 the developer applied for "P C" zoning for the remaining 3,400 acres of its holdings, and its application was approved by the planning commission and board of supervisors. In 1969 after negotiations and hearings the developer secured a resolution of the board of supervisors that it would accept a dedication of 120 acres of parkland at the northerly end of The Sea Ranch for use as a county regional park in lieu of further access corridors through The Sea Ranch, unless the developer submitted changes to plans already approved.

In 1971 legislation was adopted which required that there be a specific plan covering the area to be included within any land project for which a subdivision map was to be approved, and requiring that any tentative or final subdivision map and the provisions for its design and improvement be consistent with existing applicable general and specific plans. (Stats. 1971, ch. 1446, §§ 4 and 7, pp. 2853 and 2855, adding §§ 11526.1 and 11549.5 to the Bus. & Prof.

Code. See present Gov. Code, §§ 66474.5 and 66474.) Thereafter the developer paid the fees and costs of an independent consultant who prepared such general and specific plans under the direction of the county authorities, and such plans were adopted in 1972.

During the eight-year period prior to the adoption of the coastal initiative on November 7, 1972, the county issued various developmental approvals regarding The Sea Ranch, including not only the zoning approvals in 1964 and 1968 and the specific plan adopted in 1972, but also numerous subdivision map approvals for particular subdivision increments, use permit approvals for condominiums, sewage treatment plants and other projects, grading permit approvals where necessary to carry out development plans, and building permit approvals for structures. The developer performed substantial work and it incurred substantial expenditures in developing its land. In that respect the trial court found that over 2,000 subdivided lots have been created of which approximately 1,500 have been sold to the public. Approximately 350 single family residences and 14 condominium units have been constructed. The developer has also constructed a lodge, store facility, various recreational facilities, and other improvements of various kinds and character. It has secured a permit to appropriate water from an adjacent river to accommodate a projected over-all buildout of 5,200 units. It has obtained use permits to construct three waste water treatment plants and has undertaken construction of two of the plants. It has arranged for utility services to serve the units of the development as they have been developed. The developer had expended, prior to November 8, 1972, $26,900,000 in direct project expenditures in connection with The Sea Ranch of which $9,250,000 represented hard development costs, exclusive of engineering, architectural drawings and planning.

The property involved in the developer's application for exemption which was filed with the regional commission on May 14, 1974, varies from unsubdivided portions of The Sea Ranch designed on the specific plan map as "P C Map Use, Subject to Future Detailed Planning," to a condominium unit for which tentative map and use permits had been obtained but had expired before final approval or construction had occurred. These categories are reviewed below.

On July 11, 1974, the regional commission denied the developer's application in its entirety, and on August 14, 1974, the state commission rejected the developer's appeal. This action ensued. Other findings bearing on appellant's contentions are discussed below.

I

The trial court generally concluded, "The State of California has constitutional power to impose the permit provisions of the Coastal Zone Conservation Act upon all developers who do not meet the vested rights standard in Section 27404 of the Public Resources Code." More particularly it stated: "Although the County of Sonoma repeatedly approved the concept of a planned community development for The Sea Ranch, beginning with the 1964 zoning approval, continuing with the 1968 zoning approval, and continuing again in 1972 with Specific Plan approval, this type of general approval is not a sufficient governmental approval on which to base a claim of vested rights to develop notwithstanding the Coastal Act. Reliance upon such approval, though reasonable, does not create such a vested right. Therefore, Oceanic did not obtain vested rights to develop notwithstanding the Coastal Act as a result of either of the rezoning approvals or the Specific Plan approval;" and [¶] "The adoption of The Sea Ranch Specific Plan is not the equivalent of a building permit or

other necessary final approval required in order to obtain vested rights under the Coastal Act, pursuant to Public Resources Code Section 27404."

The developer's attack on the foregoing findings is predicated on several postulates which may be summarized as follows: First, the provisions of section 27404, which recognize an exemption from the requirement of securing a permit from the regional commission for a development if the developer had secured a building permit prior to November 8, 1972, and prior thereto had in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor, do not provide the exclusive measure of whether a developer has acquired a vested right to proceed with a development which is otherwise approved; Second, a vested right to proceed should be recognized where there is a concrete specific plan approved by governmental authority and a determination to proceed manifested by both such approval and substantial actual development in conformance with the approved plan; and Third, a recognition that planned unit development is an essential tool for achieving modern planning goals and that establishment of the vested right of the developer under such plans is proper and essential for the proper functioning of that process.

—A—

In *Urban Renewal Agency* v. *California Coastal Zone Conservation Com.* (1975) 15 Cal.3d 577, the court was reviewing a judgment which overruled the regional and state commissions and authorized the urban renewal agency, a public entity to complete all phases of the urban renewal plan. Since the agency as a public body was not required to secure a building permit, the commissions acknowledged

"that an exemption can be obtained apart from the rigid building permit requirements of section 27404 . . ." (15 Cal.3d at p. 583.) The court found that the agency was a person entitled to the benefits of section 27404, and noted, "The section discloses no intent to incorporate the entire body of common law on the subject of vested rights." (*Id.*, at p. 584.)

Similarly, in *Aires Dev. Co.* v. *California Coastal Zone Conservation Com.*, supra, 48 Cal.App.3d 534, the court noted, "Although the cases speak of vested rights in terms of reliance upon a *building permit* [citations], the Attorney General, both in the court below and in his opening brief on appeal, has argued the case on the assumption that a building permit may no longer be a *sine qua non* of a vested right. He points out that under modern land development practices various governmental approvals are required before the issuance of a building permit, each approval pertaining to different aspects of the project, and suggests that a vested right might arise before the issuance of a building permit if the preliminary permits approve a specific project and contain all final discretionary approvals required for completion of the project." (48 Cal.App.3d at p. 534, fn. omitted.)

In *Environmental Coalition of Orange County, Inc.* v. *AVCO Community Developers, Inc.* (1974) 40 Cal.App.3d 513, it was recognized that there was no sound reasoning for differentiating between "development" pursuant to a building permit, and "development" pursuant to a grading permit insofar as acquiring a vested right to complete the authorized work following substantial performance was concerned. (40 Cal.App.3d at p. 523.)

In *Avco Community Developers, Inc.* v. *South Coast Regional Com.*, supra, the court noted another concession by the commissions. The opinion states, "With commendable

candor, the commission concedes that it does not deem a building permit to be an absolute requirement under all circumstances for acquisition of a vested right. It suggests that in rare situations the government may grant another type of permit, such as conditional use permit, which affords substantially the same specificity and definition to a project as a building permit, and that in such instances a builder might acquire a vested right even though the document was not designated a 'building permit.'" (17 Cal.3d at pp. 793-794.) So in this case the findings reflect that with respect to one unit of cluster development for which the developer had secured approval for specific structures at the time of subdivision approval, an exemption had been granted in earlier proceedings.

It may be assumed that literal adherence to the issuance of a "building permit" is not the *sine qua non* of the establishment of a vested right to complete one of the forms of development contemplated by the act. (See § 27103.) It is not important to determine whether that result is obtained by so construing section 27404, or by recognizing that there is a parallel common law vested rights doctrine. In either case the scope of the development which the developer has the right to complete without a coastal permit is limited by the scope of the specific development theretofore approved and permitted, and depends upon the good faith performance of substantial work and incurring of liabilities for the development so expressly authorized. The cases upon which the developer relies make this clear, and fail to support his general claim to erect structures and make improvements other than as expressly authorized prior to the adoption of the Coastal Act.

In the *Urban Renewal Agency* case the court reversed the trial court insofar as it permitted development other than that to be carried out by the applicant for exemption. (See

15 Cal.3d at pp. 585-588.) The court also laid down the following general principles which are applicable in this case: "The Coastal Act represents a comprehensive scheme to protect and preserve the natural and scenic resources of the coastal zone, and to insure that any development which occurs within the zone will be consistent with this overall objective. (Pub. Resources Code, § 27001.) To that end, substantial doubts regarding the meaning and effect of the exemption provision (§ 27404) should be resolved against the person seeking exemption. Furthermore, contrary to the trial court's characterization, application of the act's permit requirement to the private development phase of the instant project is neither 'harsh' nor 'inequitable.' If, as plaintiffs maintain, the redevelopment plan is in total conformity with the act's 'laudatory purposes,' then the private developers chosen by plaintiffs presumably will experience little difficulty in securing the requisite permits and proceeding in an expeditious manner with the completion of the project." (*Id.*, p. 577.)

In the *Aries case,* the court applied a test of whether the developer had received all necessary discretionary approvals prior to November 8, 1972, and found that the trial court erred in finding that it had. (See 48 Cal.App.3d at pp. 544-547.) As noted in the recent *Avco* case, that rule was applied only because the trial had been held on that theory. (See 17 Cal.3d at p. 795, fn. 6.)

In the earlier *Avco* case the court was careful to point out that although a vested right could be acquired by performing work under a grading permit it was limited to the completion of that work. The court stated, "We make no determination respecting defendant's contention governmental approval of its subdivision and parcel maps, including itemized 'developments' in connection therewith, under the decision in *See The Sea* [*San Diego Coast Regional*

Com. v. *See The Sea, Ltd.* (1973) 9 Cal.3d 888] or the common law doctrine of vested rights, authorizes construction of its 'projects' in toto without a coastal permit. The 'development' included in a building or grading permit is adequately defined by the terms of the permit, its nature and the law requiring such, justifying the conclusion work performed pursuant thereto is not subject to subsequent permit requirements. However, the 'development' included in the approval of subdivision or parcel maps may not be sufficiently definitive to justify the conclusion work performed pursuant thereto was part of a 'construction' or 'project' encompassing more than the preparation of land for subdivision purposes in conformity with the approved maps." (40 Cal.App.3d at pp. 524-525.)

Finally, in the recent *Avco* case the court stated, "Even if we assume arguendo that a building permit is not required in order to acquire a vested right to construct particular buildings in every case, Avco cannot prevail. As we have seen, although the trial court found that Avco had a detailed plan for the buildings to be erected on the tract, the county was not aware of and had not approved such a plan, and the preliminary approvals which it did grant did not refer to any identifiable buildings." (17 Cal.3d at p. 797.)

—B—

The third contention may be disposed of summarily. In *AVCO Community Developers, Inc.* v. *South Coast Regional Com., supra,* the developer's position, with exceptions noted below, was similar to that advanced in this case. The court noted, "Here Avco asserts that it had a vested right to construct buildings on tract 7479 without permission from the commission because prior to February 1, 1973, when the coastal permit requirement took effect, it spent large sums of money to construct subdivision improvements and grade the tract, in reliance on several county authoriza-

tions, and that these improvements were undertaken and approvals issued for the purpose of constructing buildings. Thus, Avco relies upon the doctrine of vested rights as defined in the common law and in the Act itself." (17 Cal.3d at p. 791.) The opinion observed, "Evaluation of this claim requires a determination of the point in the development process at which a landowner can be said to have acquired a vested right to construct buildings on his land. The commission contends, subject to an exception to be discussed *infra,* that a builder may not acquire a vested right prior to the issuance of a building permit, whereas Avco asserts that in the context of a subdivision a developer's right to construct buildings vests when it has subdivided the land and installed subdivision improvements such as roads and utilities pursuant to governmental authorization. Amicus curiae appearing on behalf of Avco (*Oceanic California, Inc.* and HalfMoon Bay Properties, Inc.) argue for an even earlier time of vesting in the case of a planned unit development, i.e., when such zoning is imposed on the developer's land." (*Id.,* emphasis added.)

After reviewing and approving existing precedents, the court concluded as follows: "Nor are we convinced by the importuning of amicus curiae that we should make an exception to the accepted rules set forth above because tract 7479 is part of a planned community development. Amicus suggests that a builder acquires a vested right to construct buildings at the time the government approves a planned unit development for the property. Planned unit development allows the construction of buildings on a tract free of conventional zoning so as to permit a cluster of structures, with increased density, on some portions of a tract, leaving the remainder as open space. (*Orinda Homeowners Committee* v. *Board of Supervisors* (1970) 11 Cal.App.3d 768, 772 . . .) It is asserted that planned unit development serves the public interest because it provides an excellent

means for implementing sound planning and preserving the environment, that a builder's preliminary investment in such a development far exceeds the investment required for a conventional subdivision, and that unless a landowner is assured that he can proceed with such a development in the manner initially approved by the government, he will not have the incentive to participate in a project of that type.

"We have no reason to question the merits of planned unit development. However, the approval of such a plan merely imposes a special zoning on the property. It is beyond question that a landowner has no vested right in existing or anticipated zoning. (*HFH, Ltd.* v. *Superior Court* (1975) 15 Cal.3d 508, 516 . . .; *Morse* v. *County of San Luis Obispo* (1967) 247 Cal.App.2d 600, 602 . . .; *Anderson* v. *City Council, supra,* 229 Cal.App.2d 79, 88-90.) We are aware of no authority compelling us to carve out an exception to this rule for planned unit zoning since the rule governs zoning of all other types. If there is to be a departure from settled rules for zoning of this character it must be provided by the Legislature." (*Id.,* p. 796.)

We, therefore, reject the developer's suggestion that it acquired any vested rights to conduct further development by reason of the planned community zoning or the general or specific plans adopted by the county.

—C—

Since the developer cannot establish existence of the criteria necessary to establish a vested right and an exemption under section 27404, it must rely upon common law constitutional principles. In the recent *Avco* case the court stated, "It has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires

a vested right to complete construction in accordance with the terms of the permit. (*Dobbins* v. *City of Los Angeles* (1904) 195 U.S. 223 . . .; *Trans-Oceanic Oil Corp.* v. *Santa Barbara* (1948) 85 Cal.App.2d 776, 784 . . .)" (17 Cal.3d at p. 791. See also *Urban Renewal Agency* v. *California Coastal Zone Com.*, supra, 15 Cal.3d 577, 583-584; *Sierra Club* v. *California Coastal Zone Conservation Com.* (1976) 58 Cal.App.3d 149, 156-157 [hg.den. July 6, 1976]; and *Aries Dev. Co.* v. *California Coastal Zone Conservation Com., supra,* 48 Cal App.3d 534, 543.) The opinion continues with an analysis of *Spindler Realty Corp.* v. *Monning* (1966) 243 Cal.App.2d 255 and *Anderson* v. *City Council* (1964) 229 Cal.App.2d 79. After rejecting distinctions advanced by the developer, which are similar to those made by appellant in this case, the court concluded: "Despite minor factual variations *Spindler* and *Anderson* are clearly controlling; they stand for the proposition that neither the existence of a particular zoning nor work undertaken pursuant to governmental approvals preparatory to construction of buildings can form the basis of a vested right to build a structure which does not comply with the laws applicable at the time a building permit is issued. By zoning the property or issuing approvals for work preliminary to construction the government makes no representation to a landowner that he will be exempt from the zoning laws in effect at the subsequent time he applies for a building permit or that he may construct particular structures on the property, and thus the government cannot be estopped to enforce the laws in effect when the permit is issued." (17 Cal.3d at p. 793. See also *HFH, Ltd.* v. *Superior Court* (1975) 15 Cal.3d 508, 518 [cert.den. 96 S.Ct. 1495]; *Patterson* v. *Central Coast etc. Conservation Com.* (1976) 58 Cal.App.3d 833, 843-845; *Davis* v. *California Coastal Zone Conservation Com.* (1976) 57 Cal.App.3d 700, 708; and *Morse* v. *County of San Luis Obispo* (1967) 247 Cal.App.2d 600, 602.)

The developer, however, insists that the courts should apply a test which would recognize a vested right when the issuance of the remaining permits is only ministerial and "all final discretionary approvals required for completion of the project" have been obtained. (See *Aries Dev. Co.* v. *California Coastal Zone Conservation Com., supra,* 48 Cal. App.3d 534, 544.) In *Avco* the court apparently rejected that test by noting that the reference to that criterion in *Aries* was adopted because the case had been tried below, and briefed on appeal on that theory. (17 Cal.3d at p. 795, fn. 6.) As pointed out in *Avco,* since a building permit generally cannot be issued unless the structure complies with law, such a provision in a building code "codifies the general rule that a builder must comply with the laws which are in effect at the time a building permit is issued, including the laws which were enacted after application for the permit. [Citations.] A landowner which has not even applied for a permit cannot be in a better position merely because it had previously received permission to subdivide its property and made certain improvements on the land." (*Id.,* p. 795, fn. omitted.) A permit under the Coastal Act is required for the issuance of a building permit applied for after the effective date of that act, in the absence of an exemption.

The developer also advances a concept, not specifically addressed in *Avco,* that the "development" to be exempted from the provisions of the Coastal Act should be equated with the "project" discussed in *People ex rel. S.F. Bay etc. Com.* v. *Town of Emeryville* (1968) 69 Cal.2d 533. That case did not involve a vested right but merely a "grandfather clause" (Gov. Code, § 66632.1) which exempted certain projects which had already been commenced under specific permits. (See 69 Cal.2d at p. 536, fn. 1; and *Aries Dev. Co.* v. *California Coastal Zone Conservation Com. supra,* 48 Cal.App.3d 534, 547.) In *Emeryville* the court suggested that

in the light of the purpose of the legislation creating the San Francisco Bay Conservation and Development Commission, and the fact that the word "project" was contained in an exception to the regulatory powers adopted to carry out the objectives of that legislation, it should be construed as a term of limitation. It defined "project" as requiring "a detailed and specific plan prepared in furtherance of a determination to accomplish a certain objective. A determination without a concrete plan is not a 'project' because the means of achieving the ultimate objective are not delineated sufficiently to permit prudent commencement of the enterprise. A plan without a determination is not a 'project' because the operative decision to proceed toward the objective has not been made. Only when that decision has been made and a plan has been conceived in the detail ncessary for prudent commencement of physical efforts to achieve the objective does a 'project' come into being." (69 Cal.2d at pp. 545-546.) Although that definition was recognized in *Urban Renewal Agency* v. *California Coastal Zone Com., supra,* because it had been referred to by both parties (15 Cal.3d at p. 587), the court found that the development sought by the agency in fact was limited in scope, and ordered the trial court to modify its judgment accordingly. There is no solace for appellant in that decision. Here the developer, unlike the agency, was subject to the requirement of further permits and approvals before structures could be erected on his land. As noted below, the *Urban Renewal Agency* case disposes of the developer's contention that the existence of building restrictions, and interrelationship and interdependence of the unit developments gives it a vested interest to construct the entire contemplated project. The quotation set forth in part A above is a clear indication that the *Emeryville* definition of "project" cannot be used to vary either the statutory or common law concept of vested interest.

In an earlier *AVCO* case (*Environmental Coalition of Orange County, Inc.* v. *AVCO Community Developers, Inc., supra,* 40 Cal.App.3d 513) the court modified a preliminary injunction to permit the completion of grading which had been commenced prior to the effective date of the act under permits previously issued. We note that there the court stated, "On the other hand we have concluded whether defendant's 'development' of its property without a coastal permit extends to completion of its projects in toto, i.e., for the uses authorized by the planned community regulations allegedly adopted by the County of Orange, is a question which should be determined by a trial on the merits, and to the extent the preliminary injunction enjoins this latter 'development' granting such was not an abuse of discretion." (40 Cal.App.3d at p. 523.) In view of the later *Avco* case it is clear that the mere existence of planned community regulations does not give a vested right to proceed with construction of contemplated structures without a permit from the coastal commission.

In *Sierra Club* v. *California Coastal Zone Conservation Com., supra,* the court ruled, on the basis of the earlier *AVCO* case, "Whether the buildings within the development which were authorized by the building permit, but upon which no actual construction had commenced, were so interdependent with those buildings within the development which were under construction by February 1, 1973, that the actual construction was sufficient to also exempt the authorized but as yet unconstructed buildings, is initially a question of fact." (58 Cal.App.3d at p. 157.) The question there, however, was not whether the developer had a vested right to proceed without a building permit, but whether the building permit which had been issued was severable. It should be noted that the court approved the action of the state commission which denied the exemption as to other portions of the project which had been deemed

exempt as part of a total project by the regional commission (*id.*, and see p. 153).

We find no precedent for the broad concept of development urged by the developer.[2]

II

We turn to the specific categories of property involved in this case.

—A—

The developer states that the criteria for completion of The Sea Ranch are sufficiently articulated in the specific plan, the prior approvals, and the developmental history to the time of the effective date of the Coastal Act, as to entitle it to declaration that it has a vested right to complete all of the project exempt from the permit provisions of the Coastal Act.[3] This contention was completely answered by the Supreme Court in the *Avco* case. The general conclusions of the trial court which have been quoted above must be sustained.

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[2]On September 15, 1976, the Supreme Court denied a hearing, but directed the reporter of decisions not to publish the decision in *Get Oil Out! [600] Inc.* v. *California Coastal Zone Conservation Com.* (1 Civ. 37167) 60 Cal.App.3d (Adv.) 424 [. . . Cal.Rptr. . . .]. There the court had indicated, "It is evident that governmental authorization could be obtained for an integrated project consisting of several units which would individually constitute 'developments' within the meaning of section 27103, and that such project could be considered a 'development' in which the owner might have a vested right to compete in its entirety under section 27404. In fact, such was the construction placed under section 27404 in both the *AVCO* and *Sierra Club* cases, *supra*." (60 Cal.App.3d (Adv.) at p. 435 [. . . Cal.Rptr. at p. . . .]. As we have seen, neither the earlier *Avco* case nor the *Sierra Club* case warrants such a broad generalization.

[3]The developer suggests it is entitled to a declaration that the bulk of its undeveloped lands, which lie outside of the permit area, does not fall within the jurisdiction of the commissions under the Coastal Act of 1972. Since we are reviewing the action of the commissions, and they have not purported to exercise jurisdiction over those lands, such a declaration would be inappropriate in these proceedings.

—B—

The developer contends that it is entitled to an exemption, at least to complete development work and file final maps for three units for which tentative maps were approved prior to November 8, 1972.

The court found, "Tentative map and use permit approvals were obtained for Unit 8 in September of 1972, but no construction occurred pursuant thereto, and in accordance with applicable Sonoma County ordinance, these approvals expired in February, 1974." The court concluded, "With respect to Unit No. 8, the fact that tentative map approval occurred in September of 1972 does not by itself establish vested rights. The Commission was correct in concluding that no vested right was obtained by Oceanic for Unit No. 8 since Oceanic did not obtain building permit approvals and did not perform any construction in reliance thereon. Furthermore, since the approvals obtained in September of 1972 have since expired, any possible vested rights obtained by Oceanic have lapsed or been abandoned."

The court found, "In the following subdivision units, some development approvals had been obtained by November 8, 1972, but the subdivision approval and improvement process was not completed as of that date: Unit 34A, Unit 34B, Unit 35A, Unit 35B, Unit 35C and Unit 35D." It also found, "In June of 1973, pursuant to application by Oceanic, the North Central Coastal Commission granted a claim of exemption for the act of subdividing and developing off-site improvements in Units 35A, 35B and 35C. Construction of dwellings on the lots created in these Units was not determined by the Commission to be exempt"; and "With respect to Units 35B and 35D, tentative map approval was obtained in March of 1972, but no final map approval was ever obtained and in accordance with Sonoma County ordinance, the tentative map approval expired in late 1973." The court

concluded: "With respect to Units 34B and 35D, Oceanic had approval of a tentative subdivision map prior to November 8, 1972, but that does not create vested rights since no final map approval was ever obtained and no substantial reliance upon tentative map approval has been shown. With respect to Unit 34A, since Oceanic had not obtained a final map approval or other final governmental approvals prior to November 8, 1972, Oceanic does not qualify for vested rights with respect to Unit 34A under Section 27404 of the Coastal Act."

The developer apparently contends that the passage of the Coastal Act tolled its right to proceed under the tentative maps, and that the court erred in finding that the expiration of the period in which to file a final map furnishes a ground for failure to recognize a vested right. That argument is of no avail. The failure to acquire a vested right under the preexisting permit is predicated on the failure of the developer to commence performance and perform substantial work toward the prerequisites for filing a final map, as required by section 27404 and the common law. The approval inherent in the tentative maps lapsed because of the developer's failure to secure extensions of time from the county authorities to perform the requisites for a final map. The time for performance had passed when the exemption application was filed in March 1974. What the county might do under the circumstances cannot be determined in these proceedings. The commission and the trial court properly denied an exemption to do work toward recording a final map. Nothing in these proceedings precluded the developer from securing an extension of time from the county authorities or from them requesting a permit from the regional commission to proceed with the subdivisions' final approval.

—C—

The subdivider also claims a right to proceed with construction on areas on final maps which have been approved for the construction, subject to the issuance of a use permit, of condominiums and multihousing or cluster developments. The court found that one of the latter units, 29A, had been exempted previously because the structural features had been approved and work had commenced. There is nothing in the findings which would indicate that any other property in which such type of development was contemplated was the subject of any approval of any nature.

With respect to condominiums the court found: "With the exception of Unit No. 8, a large proposed condominium development, and Units 2 and 11A, small condominium developments which were completed prior to the Coastal Act, neither Oceanic nor any other developer of condominiums had obtained any tentative map, use permit, building permit, grading permit, or precise development plan approval for condominiums at The Sea Ranch prior to the adoption of the Coastal Act." The court concluded: "The weight of the evidence supports the Commission's determination that Oceanic did not perfect vested rights to complete any condominium units because on November 8, 1972, Oceanic had not obtained a building permit as required under Public Resources Code Section 27404 for any condominium project at The Sea Ranch with the exception of Unit No. 8 (and with the exception of two projects either completed or declared exempt from the Coastal Act during 1973, which said projects are not at issue herein)."

The thrust of the developer's attack is that the existing plans and approvals set a pattern which rendered the approval of the necessary subdivision maps, use permits, precise plans, grading permits and building permits mere ministerial acts in applying standards already established and

agreed upon. It is obvious that this contention cannot be sustained in the light of the law that has developed under the Coastal Act. The findings and conclusions of the trial court must be sustained.

—D—

Finally, it is asserted that the developer has a right to construct single family residences on all lots shown for that purpose on approved and filed maps. The court found, "With respect to the development of single family residential lots, Oceanic's development plans, as expressed to the County of Sonoma and to the Department of Real Estate, have been that Oceanic would subdivide lots and provide off-site improvements such as roads and utilities, but the design and construction of single family dwellings would be undertaken, in most cases, by the individual lot purchaser or his contractor and architect subject to the terms of The Sea Ranch Restrictions and the other applicable development constraints."

An additional finding reads, "Oceanic has no building permits for construction of single family dwellings on developed lots which it owned on the effective date of the Coastal Act. Once Sea Ranch lots designed for single family dwellings have been subdivided and off-site improvements constructed, the lot purchaser, or Oceanic, still must obtain building permits and septic tank or sewer permits in order to construct a single family dwelling upon any lot. Under certain circumstances, permits for site grading might also be required. The Sea Ranch Restrictions, read together with the subdivision maps and the Sonoma County ordinances, create structural constraint sufficiently specific in nature that the issuance of a building permit would be more

in the nature of a ministerial act rather than a discretionary act on the part of the County."[4]

The court concluded: "In light of the architectural controls and other requirements imposed upon Sea Ranch lot owners by The Sea Ranch Restrictions, and by the necessity of obtaining Sea Ranch Design Committee review and approval of any proposed construction, the issuance of a building permit for a single family dwelling by the County of Sonoma is more in the nature of a ministerial act rather than a discretionary act on the part of the County."

It, nevertheless, also concluded: "The weight of the evidence supports the Commissions' conclusion that Oceanic had not perfected vested rights under Public Resources Code Section 27404 for the construction of single family dwellings upon lots created by the subdivision process at The Sea Ranch because Oceanic had not obtained building permits for such houses prior to November 8, 1972."

The developer argues that in view of the fact that the issuance of a building permit is merely a ministerial act it should be adjudged to have a vested right to proceed with

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[4]The findings reflect that "The Sea Ranch Restrictions" are a recorded declaration of covenants, conditions and restrictions, which create a Design Review Committee for architectural control, and prescribe "the buildable area of a lot and limit the materials, color and style of the home sufficient to create an individual but uniform pattern throughout The Sea Ranch." Approval of each subdivision unit has been conditioned upon subjecting the property to the restrictions. The restrictions are specific and are for the benefit of every lot owner at The Sea Ranch. They have been administered and enforced in accordance with their terms. They set forth certain specific overall architectural guidelines for single family dwellings, and control is administered by the Design Review Committee, whose decisions, although not binding upon the county, have received the cooperation of the county in the issuance and denial of building permits. The court concluded, "The Sea Ranch Restrictions are for the benefit of every lot at The Sea Ranch subject thereto, and the owner of each lot may require that The Restrictions be enforced in accordance with their terms."

construction of single family homes exempt from the provisions of the Coastal Act. In *Avco* the Supreme Court was faced with a similar contention by the developer based upon the existence of a model. The court noted, however, "The model was prepared by Avco for its own use and was not submitted to the county." (17 Cal.3d at p. 794.) A footnote reflects, "Avco submitted photographs of the model, which was prepared in 1971, to the commission. It claims that the model is a 'product and synthesis' of the information supplied to the county, but there is nothing in the record to indicate that Avco had supplied the county with detailed information concerning the buildings it intended to construct on the tract." (*Id., fn.* 3) Here, on the other hand, it may be contended that the findings require a contrary result.

We have seen, however, that the Supreme Court propounded the doctrine that if the law required a Coastal Act permit at the time the building permit was applied for, no building permit could issue (17 Cal.3d at p. 795). Moreover, no matter how rigid The Sea Ranch restriction may be, they are no more than "supervising control over the type, size and use of the buildings to be constructed." (See *Urban Renewal Agency* v. *California Coastal Zone Conservation Com., supra,* 15 Cal.3d at p. 586.) The case last cited indicates that provisions for such a control does not give the developer a vested right to construct the structures so controlled (*id.*). It also infers that any Coastal Act exemption available to the developer should extent only to those projects which the developer itself intends to complete (*id.*, pp. 585-586). Here the court found that the developer had not proposed to undertake the construction of single family dwellings.[5]

[5]The court found: "With respect to the development of single family residential lots, Oceanic's development plans, as expressed to the County of Sonoma and to the Department of Real Estate, have been that Oceanic would subdivide lots and provide off-site improvements such as roads and utilities, but the design and construction of single family dwellings would be undertaken, in most cases, by the individual lot purchaser or his contractor and architect subject to the terms of The Sea Ranch Restrictions and the other applicable development constraints."

Urban Renewal Agency also lays to rest the contention that construction on the undeveloped portions should be exempted and authorized because of expenditures incurred for the benefit of the entire 5,200 acres. Although the trial court found that the various stages of the redevelopment project were financially interdependent the court concluded: "In our view, financial interdependence alone, however, is an inadequate basis on which to support the trial court's judgment herein insofar as it applies to future private development. In order to justify a blanket exemption for such prospective conduct, plaintiffs must point to substantial activities undertaken prior to November 8, 1972, in connection with a single 'development.' The record discloses that plaintiffs' active participation is largely completed and future private construction activities contemplated by the plan constitute development separate from the plaintiffs' in terms of design, and the esthetic and environmental considerations contemplated by the act. The fact that the private and public projects are financially interdependent in such a context does not appear controlling in the light of the clear intent of the act." (15 Cal.3d at p. 587.)

The trial court did not err in denying the developer an exemption for the construction of single family residences on approved lots, in the absence of the existence of specific plans for which a building permit had been issued and in the absence of work accomplished in connection with such construction. (See *Patterson* v. *Central Coast etc. Conservation Com., supra,* 58 Cal.App.3d 833, 843-845.)

—E—

Finally, we note that the trial court properly concluded, "The dedication by Oceanic of approximately 120 acres of land at the northern tip of The Sea Ranch for the purposes of creating a county regional park did not occur in a proceeding which is the equivalent of a building permit or necessary final approval required in order to obtain vested rights under the Coastal Act pursuant to Public Resources Code Section 27404." (See *Avco Community Developers, Inc.* v. *South Coast Regional Com., supra,* 17 Cal.3d 785, 799-801.)

III

In conclusion we point out, as was done in *Avco,* our conclusion, that no vested right inures to proceed with development of those facets of The Sea Ranch project for which no final approval and commencement of work existed at the time of the adoption of the Coastal Act of 1972, does not strip the land of all value. "The result is merely that [the developer], like all other landowners in the coastal zone who have not acquired a vested right to develop their property, must apply to the commission for a permit and, if the application is denied, then the desired buildings on the tract cannot be constructed during the period the Act is in effect.... [T]he Act is only an interim measure designed to assure that valuable coastal zone resources are not irreversibly committed during the time the commission is developing a comprehensive plan for the orderly development of the coast, and the permit requirement will automatically be repealed 91 days after adjournment of the 1976 regular session of the Legislature." (*Avco Community Developers, Inc.* v. *South Coast Regional Com., supra,* 17 Cal.3d at p. 802.)

Moreover, as noted in the *Urban Renewal Agency* case, if as the developer maintains, its planned community development is in total conformity with the Coastal Act's laudatory purpose, it will experience little difficulty in securing the requisite permits and proceedings in an expeditious manner with the completion of the project.

It now appears that on and after January 1, 1977, the development of The Sea Ranch will be subject in part to the provisions of the California Coastal Act of 1976. (Pub. Resources Code, § 30000 et seq., Stats. 1976, ch. 1330, as amended.) No opinion is expressed as to the developer's rights and obligations under that act.

The judgment is affirmed with costs incurred on plaintiff's appeal awarded to defendants and intervenors.

CERTIFIED FOR PUBLICATION

Sims, Acting P. J.

WE CONCUR:

Elkington, J.

Bray, J.*

*Retired Presiding Justice of the Court of Appeal sitting under assignment by the Chairman of the Judicial Council.

Trial Court: San Francisco Superior Court

Trial Judge: Hon. Thomas Dandurand

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OCEANIC CALIFORNIA v. NORTH CENTRAL REG. COM. — 1 Civ. 37893

APPENDIX B

ORDER DENYING HEARING
After Judgment By The Court Of Appeal

1ST DISTRICT, DIVISION 1, CIVIL No. 37893

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

OCEANIC CALIFORNIA, INC.,
Plaintiff and Appellant,

v.

NORTH CENTRAL COAST REGIONAL COMMISSION et al,
Defendants and Appellants;

NATURAL RESOURCES DEFENSE COUNCIL, INCORPORATED, et al.,
Intervenors and Respondents

Appellant's petition for hearing DENIED.

WRIGHT
Chief Justice

APPENDIX C

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Court of Appeal of the State of California
First Appellate District, Division One

OCEANIC CALIFORNIA INC., *Petitioner and Appellant,* v. THE NORTH CENTRAL COAST REGIONAL COMMISSION and THE CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION, *Respondents*	1 Civ. No. 37893 NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
NATURAL RESOURCES DEFENSE COUNCIL, INC., and CALIFORNIA COASTAL ALLIANCE, INC., *Intervenors and Respondents.*	

NOTICE IS HEREBY GIVEN that Appellant, OCEANIC CALIFORNIA INC., appeals to the Supreme Court of the United States from the Final Order of the Supreme Court of the State of California, entered in the

above-entitled matter on December 22, 1976, which denied Appellant's Petition for Hearing after this Court's affirmance of the judgment of the trial court.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Dated: March 11, 1977.

HOWARD N. ELLMAN
SUSAN J. PASSOVOY
MICHAEL J. BURKE
ELLMAN, PASSOVOY & BURKE

By HOWARD N. ELLMAN
Howard N. Ellman

Attorneys for Appellant,
OCEANIC CALIFORNIA INC.

CERTIFICATE OF SERVICE BY MAIL

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO } ss.

I, HOWARD N. ELLMAN, certify and declare that I am a citizen of the United States, over the age of eighteen years, duly licensed to practice before the Supreme Court of the State of California and a member of the California State Bar and not a party to the above-entitled cause.

On March 11, 1977, I served the within NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES, on the parties required to be served by depositing a true copy thereof to each, in a sealed envelope, with postage thereon fully prepaid, in a mailbox regularly maintained by the United States Post Office, City of San Francisco, State of California, addressed as follows:

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The Honorable Thomas J. Dandurand
Judge of the Superior Court
City and County of San Francisco
City Hall
San Francisco, CA 94102

Dated: March 11, 1977.

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In the Supreme Court of the United States

OCTOBER TERM, 1976

Supreme Court, U. S.
FILED
MAY 17 1977
MICHAEL RODAK, JR., CLERK

No. 76-1292

OCEANIC CALIFORNIA INC.,
Appellant,

vs.

THE NORTH CENTRAL COAST REGIONAL COMMISSION and the CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION,
Appellees.

NATURAL RESOURCES DEFENSE COUNCIL, INC. and CALIFORNIA COASTAL ALLIANCE, INC.,
Intervenors and Appellees.

On Appeal from the Court of Appeal of the State of California, First Appellate District, Division One, After Entry of Order by the Supreme Court of the State of California, Denying a Hearing

Motion to Dismiss or Affirm

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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1292

OCEANIC CALIFORNIA INC.,
Appellant,

vs.

THE NORTH CENTRAL COAST REGIONAL COMMISSION and the CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION,
Appellees.

NATURAL RESOURCES DEFENSE COUNCIL, INC. and CALIFORNIA COASTAL ALLIANCE, INC.,
Intervenors and Appellees.

On Appeal from the Court of Appeal of the State of California, First Appellate District, Division One, After Entry of Order by the Supreme Court of the State of California, Denying a Hearing

Motion to Dismiss or Affirm

MOTION TO DISMISS OR AFFIRM

The California Coastal Commission, successor in interest under California Public Resources Code Section 30331 to appellees the North Central Coast Regional Commission and the California Coastal Zone Conservation Commission, pursuant to Rule 16 of the revised Rules of the Supreme

Court of the United States, moves the Court to dismiss this appeal or to affirm the decision herein of the Court of Appeal of the State of California, First Appellate District, Division One, which decision became final upon issuance of an order denying hearing by the Supreme Court of the State of California.

The question presented by this appeal or petition for certiorari is entirely insubstantial. Appellant Oceanic asks the Court to rule that constitutionally protected vested property rights may be perfected by reliance upon the most preliminary and general zoning approvals. According to Oceanic, such reliance should be held to protect future development occurring decades into the future from all further exercise of the police power. Such a rule would gradually but inevitably destroy any effective police power regulation which the States or the United States may exercise in the regulation of land use. Endorsement of Oceanic's current theories would mean that if Congress in the future determined that lack of land use control by the states was weakening the nation by wasting scarce resources and that a federal system of land use control was necessary, such a system of federal control could not affect any land where the owner had allegedly relied upon state or local zoning. Such a ruling would also be entirely inconsistent with this Court's traditional recognition of the importance of the States' exercise of the police power in the protection of the public interest.

JURISDICTION

A. Procedural History

Oceanic's procedural history discloses the fact that Oceanic's vested rights theory has now been rejected in *five* forums:

(1) The North Central Coast Regional Commission which made the initial administrative determination;

(2) The California Coastal Zone Conservation Commission which reviewed and affirmed that decision on appeal;

(3) The Superior Court in and for the County of San Francisco which ruled specifically that "the State of California has constitutional power to impose the permit provisions of the Coastal Zone Conservation Act upon all developers who do not meet the vested rights standard in Section 27404 of the Public Resources Code" (Conclusion of Law No. 6, CT 550);[1]

(4) The California Court of Appeal which affirmed the trial court and rendered the opinion which Oceanic appends to its jurisdictional statement; and

(5) The Supreme Court of California which denied Oceanic's petition for hearing.

This unanimous rejection of the claim Oceanic presents in this case is entirely understandable when one considers that Oceanic's own attorneys knew this theory was completely contrary to law. This is illustrated by the following facts which Oceanic omits from its procedural history.

In mid-1973 Oceanic filed claims of exemption for three units of single family dwelling lots (construction of homes not included) and one unit of cluster-development which included construction of buildings. The documentation on these claims of exemption is found at AR 2717-3095. The applications for vested rights exemptions for these subdivisions indicate clearly that Oceanic understood in 1973,

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1. We will utilize the same system of citation to the record which is used in the Jurisdictional Statement. CT refers to the Clerk's Transcript of proceedings in the trial court; AR refers to the administrative record before the Regional Commission; and RT refers to the Reporter's Transcript of proceedings at trial.

after passage of the Coastal Act of 1972, that the law of vested rights did not permit a complete exemption for the wholly undeveloped portions of a large parcel of land being developed in increments, though a plausible argument could be made that certain subdivision increments which were "in progress" on November 8, 1972 were exempt. See Oceanic's applications, AR 2721-2728; AR 2831-2840. In these applications Oceanic stated its belief that approval of a tentative subdivision map was a discretionary act, that conditions could be placed on approval of the tentative map to require further discretionary approvals such as rezoning, and that if the County Zoning Ordinance required precise development plan approval along with subdivision approval (e.g. for condominiums, see Sonoma County Code Section 26-156), then "vested rights would not attach until such action is completed." AR 2833-34.

These statements were made on May 24, 1973. Shortly thereafter the Commission granted exemptions for the particular subdivision increments involved in Oceanic's initial applications for exemption. Then many months later, Oceanic returned to the Commission with a brand new theory of vested rights which, Oceanic contended, required the Commission to grant an exemption for *all* further development work on its incremental project, including work which has not even gotten beyond the preliminary planning stages. Oceanic proposed that the Commission should grant vested rights based on alleged reliance upon little more than a zoning approval, a concept which was and is without precedent in California law. In this proceeding, Oceanic asks this Court to overturn long-standing rules of vested rights which the agencies and the courts of California have properly applied.

B. Jurisdictional Ground for a Hearing in This Court

Appellees do not dispute that this Court has jurisdiction to consider whether the final ruling of the highest State Court of California violates the rights of any person under the Fourteenth Amendment of the United States Constitution. Appellees would note, however, that Oceanic's claim that Section 27404 of the California Coastal Zone Conservation Act of 1972 is unconstitutional is quite similar, and in some respects identical, to the contentions made by Avco Community Developers, Inc. in two cases which have recently been appealed to this Court. In both cases, this Court has dismissed the appeal and denied certiorari. See Case Nos. 76-888 and 76-1102. Rulings reported at 45 Law Week 3569 and 45 Law Week 3664. This case deserves a similar summary dismissal.[2]

QUESTION PRESENTED

Appellant, Oceanic California, Inc., has not fairly stated the question in this case. The question appellant presents in its jurisdictional statement is more properly stated as follows:

Can a developer defeat an otherwise valid exercise of the police power by claiming to have relied on a preliminary approval in concept embodied in a zoning change, which

---

2. Oceanic extensively briefed its legal position as *amicus curiae* on behalf of Avco before the California Supreme Court. The Court specifically referred to Oceanic's participation and rejected its theory completely. 17 Cal.3d at 796. The opinion below recognized this in its statement that "the principle predicates upon which the developer's contentions must rest have been advanced and refuted in the recent decision in *Avco Community Developers, Inc. v. South Coast Regional Comm.* (1976 17 Cal.3d 785". (See Jurisdictional Statement, p. A-2).

approval does not of itself authorize any construction, and which gives the developer notice that further more specific approvals are required, or may the government insist that constitutionally protected vested rights depend on reliance upon an actual authorization to proceed with and complete particular development shown on precisely drawn approved plans?

STATEMENT OF THE CASE

A. Development History of the Sea Ranch

The development history of Oceanic's "Sea Ranch" development discloses two general types of governmental action relating to governmental review and approval of Oceanic's development plans. One type of action involves general approvals in concept typified by the adoption of zoning districts and a general and specific plan for the Sea Ranch area. Two common characteristics of these governmental actions are that (1) they do not specifically authorize any construction to occur but instead contemplate that further specific authorizations will have to be obtained, and (2) they are, under California State Law, subject to change at any time that the governing body determines that such change is in the public interest. *See* California Government Code Section 65356.1 (amendment of general plan); Government Code Section 65507 (amendment of specific plan); Government Code Section 65853 (amendment of zoning ordinance). In other words, a developer who obtains favorable action on a zoning request is on notice that further authorization is required before he may assume the zoning is in any way fixed. A second type of governmental action involves the approval of subdivision maps, grading permits, building permits, and the like. Unlike the first category, these actions authorize specific construction or other development to occur and they are based on precisely drawn development plans which define exactly what the developer intends to do.

While the trial court did recognize that the first type of action had occurred with respect to all of Oceanic's Del Mar Ranch property[3] (trial court findings 5, 7, 14, and 18-20, CT 533-391), the trial court also found that with respect to all of the land for which Oceanic claims vested rights in this proceeding, Oceanic lacked some or all of the followings: tentative subdivision map approval, final subdivision map approval, use permit approvals, precise development plan approvals, grading permit approvals, septic tank or sewer connection approvals, and building permits. See trial court findings 24, 25, 26, and 32; CT 540-43. Since Oceanic could not claim to have relied upon the second category of governmental action for the lands involved in its claim of exemption in this case, Oceanic's argument has consistently focused upon the first type of governmental action, contending that in this case the zoning approvals and the adoption of the general and specific plan should be considered an adequate basis for a constitutional prohibition against any further governmental regulation.

1. THE PLANNED COMMUNITY ZONING APPROVALS

The first zoning approval for the Sea Ranch occurred in June of 1964 when the County adopted a planned community district for the southerly 1,800 acres of the Del Mar Ranch. In the jurisdictional statement, Oceanic does its best to make it sound as though this approval was based upon a

3. Oceanic purchased a 5,200 acre tract of land in Sonoma County known as the Del Mar Ranch. Portions of this land have been made part of a residential community which Oceanic has named the Sea Ranch.

very specific plan for construction of a precise development by stating that various studies

> "were presented as part of Oceanic's zoning application and became a part of the approvals subsequently granted, for the express purpose of requiring control of all human activities on the Sea Ranch by precise constraints, applicable to the entire property, to achieve the goals of a precise plan of use and environmental protection." Jurisdictional Statement, page 9.

This statement contends, by way of suggestion, that the provision of criteria whereby any number of precise plans might be evaluated is the equivalent of the provision of one precise plan for review by a governmental body.[4] Close examination of the 1964 planned community development plan demonstrates this point.

The 1964 PC Plan (referred to in the trial court's finding 5 as the "1964 PC Map" and found at AR 919) shows that as of the time the PC zoning was adopted, only generalized areas had been designated for various types of residential and commercial development. Not a single building is precisely sited nor is it even possible to determine how many lots will be created in any given area or overall. Although it is difficult to read the reduced reproduction of 1964 PC Map which is contained in the administrative record, the original map, filed with the trial court as an exhibit, shows that in no less than 10 places on the map a disclaimer is made that all buildings shown on the map are schematic only and are not intended to reflect true density of develop-

4. This is significant because it shows that Oceanic's argument, stripped of rhetoric, amounts to little more than the contention that developers should be permitted to perfect vested rights by relying upon zoning ordinances.

ment.[5] Thus, it was recognized from the very beginning that although the County approved a zoning application for nearly ⅓ of the land owned by Oceanic in 1964, further governmental approvals in the nature of precise development authorizations would be required as Oceanic worked out the specifics of its intended development. (See AR 923-24; RT 145-46, 173).

In early 1968, Oceanic obtained from the County planned community zoning for the remaining 3,400 acres of the Del Mar Ranch. (Finding 14, CT 537). Examination of the 1968 PC Map (found at AR 914) indicates once again a very generalized plan which does not show specific siting of lots, homes, or condominiums.

The County Planning Department's staff report on the 1968 Plan, while recommending favorable action, makes it very clear that this approval is by no means a final

5. The imprecision of both the 1964 and 1968 PC Plan Maps not only serves to indicate that further authorizations were required, but in the case of the Sea Ranch actually constitutes a showing that the PC Zoning obtained by Oceanic was void. Respondents made a showing to the trial court that Oceanic had not complied with the PC Zoning ordinance which existed in 1964 and 1968, that according to the ordinance the approval of such zoning was therefore void, and that there was no explanation of why the ordinance was violated nor any showing of an attempt to obtain a variance. Under *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813, 819 and a number of other California cases cited in the briefs below, vested rights cannot be perfected based upon invalid approvals. However, the trial court refused to grant respondents' findings on the issue of the validity of Oceanic's PC Zoning, and on appeal the Court of Appeal determined that it was not necessary to consider our cross-appeal on that matter (See Respondents' responding brief on appeal and opening brief on cross-appeal, pages 181-192) because even assuming that the zoning was valid, Oceanic had not obtained vested right. The question of the validity of the zoning remains unresolved. We mention it at this point only because we believe that even if this Court were sympathetic to some of Oceanic's contentions, the facts of this case render it inappropriate as a foundation for a new federal rule of vested rights.

authorization of all development which is to occur on the Del Mar Ranch. The staff states:

> "Since there is only a schematic development plan, we readily recognize that the areas designated are generalized and as more precise studies are developed by the Sea Ranch planning staff the boundaries will be adjusted accordingly by subsequent amended use permits and planning commission action on tentative subdivision maps." (AR 943).

A similar oral statement to the Sonoma County Board of Supervisors is documented in the minutes of the meeting of April 9, 1968 (AR 966).

Further examination of the way in which these zoning approvals were implemented historically indicates that the development of the Sea Ranch has always proceeded on an incremental basis. See trial court finding No. 8, CT 535-36. For each numbered subdivision unit mentioned in the first sentence of finding No. 28 by the trial court, (CT 542) Oceanic filed a separate tentative subdivision map which required approval by the County of Sonoma. (See AR Volume IV for the various resolutions of the Planning Commission and Board of Supervisors with respect to each subdivision). Oceanic would then execute, for each separate subdivision unit, an improvement agreement and provide a performance bond to insure that all of the work on roads and utilities or other development contemplated in the tentative map approval would in fact be performed. (See AR, 1379-1809). After execution of these agreements, and in some cases after the grant of the scenic easement over all common areas in a particular Sea Ranch increment, the County would approve a final subdivision map which would thereafter be recorded with the County Recorder. At the time of such recording, the increment would be

made subject to the Sea Ranch restrictions by formal annexation in accordance with those restrictions. (See Article II of the Sea Ranch restrictions, AR 853-54). Finally, after recordation of a final subdivision map, for each individual unit of the Sea Ranch a subdivision public report would be issued by the California Department of Real Estate. (See AR 2265-2483). A detailed chronology of the history of each unit of the Sea Ranch, whether completed or only partially approved as of November 8, 1972, is provided in the appendix to the staff report before the Regional Coastal Commission. (AR 121-148).

2. GENERAL AND SPECIFIC PLAN APPROVAL

When general and specific plans were adopted for the Sea Ranch area in August, 1972, the incremental nature of the development procedure was emphasized. The specific plan, for example, does not contain specific planning for all of the acreage which Oceanic may ultimately make a part of the Sea Ranch through the annexation process described above. (Finding 20, CT 539). Precise lot design is shown for all of those areas for which tentative subdivision maps had been approved by mid-1972, but nearly ⅓ of the acreage of Oceanic's original holding (Del Mar Ranch), is simply left for future detailed planning. (Finding 20, CT 539; AR 1062). This unplanned portion of the 1972 specific plan reflects that precise planning of development on the Del Mar Ranch has *not* occurred at the zoning stage, but only as incremental units have been brought to the County for specific authorization. The specific plan itself states:

> "The lands subject to this specific plan fall into two categories—those which have been developed or are scheduled for development in the near future, and

those as to which detailed planning *has not advanced beyond the level of the existing planned community zoning.*" (Emphasis added) AR 1052.

Evidence at the trial indicated that the unplanned area was left without specific details partly because the County wished to maintain the possibility of access from Highway 1 through the Sea Ranch to adjoining lands and partly because the owners of such adjoining lands wanted to assure that if growth control were imposed in the future, "that the Sea Ranch would not get the lion's share of the growth", simply based upon approval of this specific plan. (RT 47). In other words, the records shows that the County intended to maintain its option of reducing the density on the undeveloped portion of the Del Mar Ranch if future conditions indicated a need to do so prior to the establishment of actual use by Oceanic.

3. THE SEA RANCH RESTRICTIONS

In concluding this discussion of the various overall review actions taken by the County with respect to Oceanic's land holdings (the Del Mar Ranch) it is appropriate to comment on the uniform system of covenants, conditions and restrictions (the "Sea Ranch restrictions") which have been applied to each increment of development. These restrictions have been important in this proceeding since Oceanic has consistently contended that the County relinquished all discretion for approval of homes on Sea Ranch lots by requiring that each subdivision increment be made subject to the Sea Ranch restrictions. In other words, Oceanic's theory of vested rights contends that once the County required the Sea Ranch restrictions as part of subdivision map approval, it necessarily (by constitutional mandate) relinquished all police power review of the use of the lots created.

Oceanic's theory is based on the fact that the Sea Ranch restrictions place certain design controls on the purchasers of Sea Ranch lots, and Oceanic contends that the approval of these controls is essentially equivalent to approval of a precise architectural plan for a building. (See Jurisdictional Statement pages 9-10). However, there is a great deal that Oceanic does not disclose to this Court about the restrictions. First, the design controls referred to above *do not apply to lots owned by Oceanic.* (See definition of "owner" in the Sea Ranch restrictions which exempts Oceanic from the necessity of complying with the design controls, AR 851). The trial court found that this litigation affects only the land owned by Oceanic (conclusion of law 14, CT 551-551A), and since on that land the design restrictions do not apply, the design restrictions are irrelevant in this case. A second factor which Oceanic does not disclose about the restrictions is that most of the design controls imposed by the restrictions are effected exclusively through the requirement of obtaining design approval from the Sea Ranch design review committee. The restrictions do *not* provide any specific plans for construction on any lot. (Finding No. 12, CT 536-37). Precise construction plans for buildings are not formulated until shortly before construction and are submitted to the design review committee only when they have been completed by the lot owners' architect. See Section 3.03(e) of the Sea Ranch Restrictions, AR 857-58. The design committee exercises complete discretion over approval of the siting or design of any proposed single family dwelling at the Sea Ranch except for dwellings which may be built on lots owned by Oceanic itself. (Finding 12, CT 536-37; Sea Ranch Restrictions, Section 3.03(e), AR 858 and AR 851; testimony of Al Boeke, AR 377-81). Moreover, although

the County historically agreed with the design committee in its decisions by issuing permits only to those persons who obtained design committee approval, the County did *not* expressly delegate any authority to the Sea Ranch design committee. (Finding 13, CT 537). Hence, the County retains the ability to control design and construction of homes on Sea Ranch lots. (See testimony of Supervisor Vella on this point, RT 86-89).

This review of the development history of the Sea Ranch indicates that this case does not involve a "precise, specific and complete approval of the Sea Ranch" as Oceanic has represented to the Court. Jurisdictional Statement, page 27. Furthermore, careful examination of the various actions of the County of Sonoma shows that many of the statements made in the Jurisdictional Statement are misleading. When Oceanic states that the 1964 zoning approval included controls "locating each lot by reference to environmental constraints" (Jurisdictional Statement, page 9) this really means that the County adopted criteria to guide location of lots in the future. No lots were actually located on the 1964 plan. Similarly, when Oceanic states that the 1964 zoning approval included controls "restricting the buildable area on each lot by scenic easements, view corridors and other restraints" (Jurisdictional Statement, page 9) what is really meant is that the Sea Ranch restrictions provided for the *possibility* that such restraints might be imposed in the future. In fact, examination of all of the subdivision maps recorded to date (contained in administrative record, Volume VI) shows that the vast majority of lots which Oceanic has created contain no such restrictions other than a standard 10 or 20 foot set back line. Finally, when Oceanic states that the zoning approved by the County contained controls "controlling size, weight, bulk, exterior

appearance (down to the color and composition) of all structures" (Jurisdictional Statement, page 9) what is really meant is that a design review committee was created to review these matters as the need should arise in the future, and that no control whatsoever exists for buildings constructed on lots owned by Oceanic. Viewing the record realistically, neither the Commissions nor the Courts of California agreed with Oceanic that this development history provides a basis for concluding that the State has relinquished its right to exercise the police power by allowing the developer in this case to rely upon a final authorization of the entire Sea Ranch project.

4. DEDICATION OF LAND FOR THE GUALALA POINT PARK

One final area in which the Jurisdictional Statement is misleading involves the dedication of some land for the Gualala Point Park which occurred in June of 1969. Oceanic states (Jurisdictional Statement, page 12) that the "*instrument of conveyance* recites that the park was dedicated to provide public recreational use of the coast pursuant to an overall land use plan for the Sea Ranch as a unitary development". (Emphasis Added). While such a statement did appear in a resolution declaring policy of the County Board of Supervisors (dated June 30, 1969 and found at AR 2245), this resolution was *not* an "instrument of conveyance" and in fact the policy resolution was passed three weeks *after* the actual acceptance of the dedication occurred. Oceanic did not submit to the Coastal Commission any document which could be fairly viewed as an instrument of conveyance, though the record does reflect a description of the offer of conveyance in the minutes of a meeting of the Board of Supervisors (AR 2250) and the acceptance of this offer is documented by a resolution dated June 9, 1969 (AR

2243). The offer to dedicate was apparently conditioned only upon the County agreeing to develop the acreage as a regional park (which was obviously to Oceanic's benefit in making its lots more attractive to prospective purchasers) and the acceptance was conditioned only upon the provision of adequate title insurance. In other words, there is no indication that Oceanic requested or that the County agreed to a condition that this dedication be contingent upon continued exercise of the police power in any particular manner in the future. Under these circumstances, there is nothing inequitable about the continued exercise of the police power through application of the Coastal Act to Oceanic's development after a dedication of open space acreage has been accepted at face value and all conditions expressed in the dedication have been satisfied.

B. The California Coastal Zone Conservation Act of 1972

On November 7, 1972 the voters of the State of California enacted the California Coastal Zone Conservation Act of 1972 by initiative in order to protect Statewide interests in the orderly planning and development of the Coastal Zone. The Coastal Commissions created by the 1972 Act did not assert permit jurisdiction over development which had already occurred at the Sea Ranch nor did the Commission refuse to exempt areas of the Sea Ranch where Oceanic contended development had commenced prior to the enactment of the Coastal Act. The Commission did insist that the Act's provisions applied prospectively to future development of further increments at the Sea Ranch. It is this position that Oceanic challenges in this case and refers to as "retroactive regulation" (Jurisdictional Statement, page 2).

The California Coastal Commissions recognize that exercises of the police power, whether under the Coastal

Act of 1972 or the succeeding Coastal Act of 1976, are subject to the requirement of reasonableness and that actions taken pursuant to jurisdiction over future development by Oceanic will be judged by that standard. But the Court should note that this question is not in issue at this time. Oceanic did not seek permits for any significant development during the pendency of the 1972 Coastal Act but instead apparently *assumed* that such permits would be denied.[6] It was, of course, Oceanic's privilege to halt development of the project while it litigated the question of the Commission's jurisdiction, but it is not true, as a legal matter, that pending these proceedings "development has necessarily stopped". (Jurisdictional Statement, page 15, Note 11). Oceanic now attempts to cover its own failure to apply for a development permit by contending that public statements made by various individual commissioners show that the Commission had publicly indicated an "intent to prevent any further development of the Sea Ranch". (Jurisdictional Statement, pages 7-8). Reference to the statements themselves (cited in Jurisdictional Statement, page 8, note 7) shows that they fall far short of Oceanic's description, but even if Oceanic's description were accurate, this would not be a proper issue to be raised in this proceeding because the sole purpose of this proceeding is to determine whether commission jurisdiction exists and not whether jurisdiction is properly being exercised. The question at issue in this proceeding, whether jurisdiction exists, is limited to a determination whether vested rights may constitutionally be limited to those cases where developers have relied upon actual authorization rather than acting in anticipation that such authorizations may be forthcoming in the future.

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6. One or two permits for minor amounts of development were granted by the Commission. No permits applied for by Oceanic were ever denied.

ARGUMENT

I. It Is Constitutional for the State of California to Require Reliance Upon a Building Permit or a Substantially Equivalent Authorization to Proceed with and Complete Particular Construction or Other Development Before a Vested Right Is Recognized

As Oceanic points out (Jurisdictional Statement, pages 19-20) traditional vested rights cases in California have stated that the vested rights doctrine is based at least in part upon the doctrine of equitable estoppel, and that the traditional cases have not recognized an estoppel until a building permit has been issued and a developer has substantially relied upon such permit. *Anderson v. City of Pleasant Hill* (1964) 229 Cal.App.2d 79, 89. *See also Spindler Realty Corporation v. Monning* (1966) 243 Cal.App.2d 255. One of Oceanic's major contentions in the argument section of its Jurisdictional Statement is that the California courts have irrationally fixed upon the building permit as the standard in every case and have disregarded the principle of equitable estoppel. For a number of reasons this contention provides no basis for further review of this matter by the Supreme Court.

First, while the doctrine of vested rights may be closely related to the doctrine of equitable estoppel, it is obvious from an examination of cases involving these two doctrines that they are not identical. In the case of *Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725 the California Supreme Court outlined the doctrine of equitable estoppel as follows:

> "The elements of the doctrine are that (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and

> (4) he must rely upon the conduct to his injury. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488-489 [91 Cal. Reptr. 23, 476 P.2d 423].)"

Under this framework, an equitable estoppel depends not only upon reliance upon a statement or conduct of the party to be estopped, but reliance *to the detriment or injury* of the party seeking the estoppel.[7] The doctrine of vested rights, as set forth in the cases, does not expressly require a showing of detriment, but is satisfied if simple reliance upon a clear authorization to proceed is shown. See e.g. *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 791.[8] The four elements listed above also indicate that in order for an estoppel to occur the knowledge of the parties must be unequal concerning the basic facts involved. In the development approval context, at the time of the approval (the conduct on which the estoppel must be based) both parties are normally equally knowledgeable about the facts involved concerning the development, or if anything the developer is normally more knowledgeable. This equal knowledge would normally

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7. In this case Oceanic made no attempt to prove that it has been injured by reliance upon the planned community zoning approvals. Oceanic cited only that it had spent some $26,000,000.00 developing the Sea Ranch. No evidence was presented as to the amount which Oceanic had received from sale of lots and other income sources related to the Sea Ranch and the trial court was therefore unable to determine whether Oceanic had made a profit or a loss on the project as of November 8, 1972. See trial court finding no. 35(b) CT 545-46. Since Oceanic has shown no injury resulting from its reliance, it has not demonstrated that an equitable estoppel should occur in this case.

8. The vested rights test *could* require a showing of actual harm before a non-conforming use is recognized, but California courts have not taken this approach, possibly because of the difficulty of determining when losses are due to the new regulation and when they are simply due to bad management or market conditions not associated with the new regulation. This difficulty is avoided by simply granting a vested right to *all* who qualify, regardless of profit or loss, under a test which all parties have notice of when they contemplate the decision to begin a project.

militate against an estoppel, yet the doctrine of vested rights requires the government to stand by its final authorization if that authorization is valid and has been substantially relied upon. Thus, the doctrine of vested rights, while related to the doctrine of equitable estoppel, is more a product of the due process clause of constitution and the basic requirement of fairness than an application of the doctrine of equitable estoppel.

The importance of this analysis is that it explains why the courts of California have drawn a clear line constituting a legal test for vested rights rather than leaving the vested rights test subject to a case-by-case factual determination as is generally the procedure in determining whether an equitable estoppel has occurred. The concept of fundamental fairness embodied in the due process clause of the constitution is satisfied by the fact that the law has been clear for many many years that vested rights can be obtained when, and only when, a developer relies upon a final authorization to proceed. *Dobbins v. City of Los Angeles* (1904) 195 U.S. 223; *Avco Community Developers, Inc. v. South Coastal Regional Commission* 17 Cal.3d 285; *Anderson v. City Counsel* (1964) 229 Cal.App.2d 79. Developers have also been on notice for many years that "a land owner has no vested right in existing or anticipated zoning". *Avco Community Developers, Inc. v. South Coast Regional Commission, supra* at 796; *HFH Ltd. v. Superior Court* (1975) 15 Cal.3d 508, 516; *Morse v. County of San Luis Obispo* (1967) 247 Cal.App.2d 600, 602. Since developers, and particularly sophisticated developers such as Oceanic,[9] are capable of anticipating when their rights will

9. The trial court specifically found:
"During the development of the Sea Ranch, Oceanic has been represented by legal counsel and has been capable of determining the legal requirements which may affect the development of the Sea Ranch." Finding No. 15, CT 537.

vest and are therefore capable of determining whether they wish to take the necessary business risks involved in any development, it is not unfair to impose upon them those normal risks of development. In this case, the knowledge of the developer of the need to obtain further authorization must be assumed not only from the general presumption that developers as well as other persons are presumed to know the law, but also because the zoning approvals and the general and specific planned approvals clearly authorize no development or construction but require further authorization to be obtained before construction may proceed.

Oceanic complains that the issuance of a building permit is normally a ministerial function and that vested rights should not be measured from a point so unimportant as the issuance of "a certificate of probable noncollapse" (Jurisdictional Statement, page 25). However, as we have noted above, the amount of discretion exercised by government at the point where vested rights occur is not as important in determining the fairness of the rule as is the clarity of the rule itself so that adequate notice is given. Where developers *know* that they must obtain a building permit (as they have known in California for decades) then the rule is fair and constitutional regardless of whether one considers it the wisest or most logical rule.

Of equal importance, Oceanic is incorrect in characterizing the issuance of a building permit as necessarily a ministerial act. While it is true that some building codes have been interpreted in such a way that the issuance of a building permit is considered ministerial, there are other situations in which the issuance of a building permit has been interpreted to involve the exercise of considerable discretion. *See e.g. Slagle Construction Co. v. County of Contra Costa* (1977) 67 Cal.App.3d 559. Moreover, the

fact that a building code may presently be structured in such a way that the issuance of a building permit is ministerial does not preclude the possibility that future ordinances may amend that code to require the exercise of discretion by planning commissions and building departments. To adopt Oceanic's theory would mean that once a subdivision map is filed, any such changes in the building code can have no effect on buildings constructed on the lots created by the subdivision even if such construction does not take place for decades into the future. The law does not favor the creation and continuation of non-conforming uses (*See County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 686-87 and cases cited therein) and the Constitution certainly does not require complete suspension of the police power upon the filing of a subdivision map. *Hill v. City of Manhatten Beach* (1971) 6 Cal.3d 279, 285-86.

Oceanic's arguments concerning the requirement of the building permit should also be rejected because they mischaracterize the actual holdings of the California Courts. The California Supreme Court in *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 793-94 referred with approval to the fact that the Commissions do not deem "a building permit to be an absolute requirement under all circumstances for acquisition of a vested right". [The Commission] suggests that in rare situations the government may grant another type of permit, such as a conditional use permit, which affords substantially the same specificity and definition to a project as a building permit, and that in such instances a builder might acquire a vested right even though the document was not designated a 'building permit.'" The Court of

Appeal in this case makes reference to this passage and states:

> "It may be assumed that literal adherence to the issuance of a 'building permit' is not the *sine qua non* of the establishment of a vested right to complete one of the forms of development contemplated by the [Coastal] Act." Jurisdictional Statement, page 8-9; 63 Cal.App.3d at 67.

In other words, the California Courts have agreed with the Coastal Commission that the vested rights test is described with complete accuracy as substantial reliance upon a final authorization to proceed with and complete precisely defined development. A building permit provides the specificity of plans, and the clear authorization to proceed which is necessary to obtain a vested right. The building permit also normally contains a time limitation which avoids the accumulation of nonestablished, nonconforming uses. Other permits and authorizations which have the same attributes will probably be recognized in the future for the establishment of vested rights as they have been in the past. E.g. *Spindler Realty Corporation v. Monning* (1966) 243 Cal.App.2d 255 (vested rights based upon a grading permit); *Trans-Oceanic Oil Co. v. Santa Barbara* (1948) 85 Cal.App.2d 776 (vested rights based upon issuance of a drilling permit). The issuance of general zoning approvals which do not contain these important characteristics, however, have not been recognized in the past as a basis for vested rights and do not constitute an appropriate basis for recognition of vested rights in the future.

II. Nothing in Modern Land Use Control Procedures Requires a Change in Traditional Vested Rights Law, but if Such Change Is Deemed Desirable, It Should Be Accomplished by Legislation and Not by Constitutional Mandate

Oceanic argues that because land use controls have changed in recent years in that specific projects are subjected to greater scrutiny on a case-by-case basis, it is time for the Court to reexamine and reformulate the constitutional concept of vested rights. (Jurisdictional Statement, page 17). However, Oceanic would have the Court focus only upon the increased impact upon the individual developer of modern development control and ignore the basic reason why such controls are becoming more stringent. We live in a time of increasing population and diminishing resources. Our nation is becoming increasingly aware that as all types of resources, including land, become more scarce, there is an increasing public interest in how such resources are used and there is an ever increasing need for new and innovative laws in exercise of the police power to protect the public interest. Thus, if anything, this Court's statements in *Euclid v. Ambler Realty Co.* (1926) 272 U.S. 365, 71 L.Ed. 303, 47 S.C. 114 that the extent of the police power must depend upon contemporary conditions means that in modern circumstances far more stringent police power regulations are possible than those which were possible when the *Euclid* case was decided. As our resources become scarcer in the future, an even greater need for innovative controls can be anticipated. Thus, Oceanic's one sided view of "contemporary conditions" is out of touch with reality in suggesting to the Court that a new constitutional rule of vested rights, placing massive restrictions upon the exercise of the police power, is appropriate at this time.

Oceanic's request for a change in the law of vested rights resolves into two main arguments. First, Oceanic contends that modern land use practices, by achieving public objectives in better planning and dedications of necessary open space and public facilities, should be encouraged and that a change in the law of vested rights is necessary to provide such encouragement. Oceanic suggests that developers will not make necessary dedications and comply with other public interest oriented conditions of development unless they are assured that reliance upon planned unit development zoning will prevent government from exercising the police power even as to severable portions of a project which have not been commenced. A careful sociological and economic study of development practices today might confirm or more probably would refute Oceanic's contention in this regard,[10] but whether Oceanic is correct or not, it is obvious that the extent of protection afforded to developers should be de-

10. Land use authorities are by no means unanimous in their praise of planned unit developments. Serious criticism of this concept is found, for example, in 2 N. Williams, Jr., *American Planning Law: Land Use And The Police Power*, §§ 48.01-48.12 (1974); R. Burchell & J. Hughes, *Planned Unit Development: New Communities American Style* (1972); Mandelker, *Reflections on the American System of Planning Controls: A Response to Professor Krasnowiecki*, 114 U. Pa. L. Rev. 98 (1965). Among the many objections to the planned unit development concept, Norman Williams makes the following observation:

> "The final objection to the PUD approach is simply that the basic principle is wrong. Along with the obvious possibilities for favoritism and/or corruption, the establishment of such a system is just a step away from government by rule of law, and back to the system of government by deal. From this viewpoint, planned unit development regulations are not a new idea; they are an invitation to regress, under rather stylish auspices, to the worst abuses of the past." 2 *Williams, supra*, § 48.04 at 231.

This is the concept which Oceanic contends should have a special constitutionally protected status.

cided as a legislative matter. The Commissions respectfully contend that the due process clause does not require this Court to second guess legislative judgment in this area by codifying Oceanic's views of sound planning policy in constitutional concrete.

A more significant argument which Oceanic makes in support of a change in the traditional rule of vested rights involves purported fairness to developers. Oceanic paints a picture of government conniving to take advantage of developers by demanding and accepting dedications and other benefits in exchange for development approval while harboring the secret intention of repudiating those approvals at a future time. This picture is not only a distorted view of the general relationship between government and land owners, but as we have pointed out above, it has nothing to do with the facts of this dispute. Oceanic knew at all stages of development of the Sea Ranch that further development depended upon receipt of further approvals from the County. This knowledge is vividly demonstrated by Oceanic's own statement to the Coastal Commission in 1973 concerning the law of vested rights. Therefore, in undertaking certain expenditures for utilities and planning with respect to all of its land, Oceanic took a calculated risk which is simply part of the land development business.

Responding more directly to Oceanic's general assertions concerning the unfairness of the vested rights rule as applied to modern land development procedures, the Commission would point out that the present law of vested rights does not prevent developers from protecting themselves against the possible necessity for a future exercise of the police power which may modify their project and effect their profit. For example, a developer who grants a

significant dedication in exchange for development approval may either insure that the dedication does not occur until the final authorizations are received, or alternatively may condition the dedication upon completion of a certain amount of development. Oceanic did not do this. A developer of a large project can either phase construction of utilities to minimize the risk of later modification of the project, or he may knowingly accept the risk of a future modification if he perceives a potentially larger profit from constructing such facilities all at once. Oceanic would have this Court rule that the Constitution requires government to provide assurance that many years of projected development will continue to be permitted regardless of changes in social, economic, and environmental conditions, and thereby insure a developer's profits once he obtains the most preliminary approval of a massive development project.

In addition to rejecting Oceanic's contention that the Constitution requires such a result, the Commissions contend that such a result is undesirable from a public policy point of view. The current risk which the developer must run of a future exercise of the police power has the salutory effect of forcing the developer to consider the public interest at all stages of the planning and execution of his development since his profits depend upon continued acceptance of the development by the community. Elimination of that risk, either legislatively or by constitutional interpretation, would have the effect of encouraging the developer to push through undesirable projects by any available means regardless of public interest considerations since even preliminary approval would insure against the losses from the need for further regulation. Under current vested rights law, the developer who anticipates and provides for accom-

modation of the public interest is far less likely to suffer a loss due to later exercise of the police power than a developer who ignores considerable public interest considerations in planning his development.[11] In short, developers are not incapable of protecting themselves from either unreasonable exercises of the police power or unexpected necessary exercises of that power. Thus, Oceanic's arguments in favor of a change of the law of vested rights are both insubstantial on their face and inapplicable to the current controversy.

CONCLUSION

For all of the foregoing reasons, there is no need for this Court to treat this case any differently from the cases of *Avco Community Developers, Inc. v. South Coast Regional Comm.*, Case No. 76-888 (Appeal dismissed for lack of jurisdiction; cert. denied, 45 LW 3569) and *Avco Community Developers, Inc. v. South Coast Regional Comm.* Case No. 76-1102 (Appeal dismissed; cert. denied, 45 LW 3664). The California Courts have properly applied a constitutional rule of long-standing which is fair and reasonable and which should not be disturbed.

Respectfully submitted,

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11. For example, Oceanic planned the Sea Ranch in such a way that it would restrict access to over ten miles of California's publicly owned tidelands so that only the owners of Sea Ranch lots could use those tidelands. In a companion case involving Commission action granting permits for home construction on Sea Ranch lots, the California Court of Appeal has noted that this development plan is against the public policy of the State of California. *Natural Resources Defense Council, Inc. v. California Coastal Zone Conservation Commission* (1976) 57 Cal.App.3d 76, 84. It is also a violation of California Constitution Article X, Section 4 (formerly Art. XV, Sec. 2) which provides:

> "No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof."

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1292

OCEANIC CALIFORNIA INC.,
Appellant,

vs.

THE NORTH CENTRAL COAST REGIONAL COMMISSION and THE CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION,
Appellees.

NATURAL RESOURCES DEFENSE COUNCIL, INC. and CALIFORNIA COASTAL ALLIANCE, INC.,
Intervenors and Appellees.

On Appeal from the Court of Appeal of the State of California, First Appellate District, Division One, After Entry of Order by the Supreme Court of the State of California, Denying a Hearing

MOTION TO DISMISS OR AFFIRM

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On Appeal from the Court of Appeal of the State of California, First Appellate District, Division One, After Entry of Order by the Supreme Court of the State of California, Denying a Hearing

MOTION TO DISMISS OR AFFIRM

Appellees and Intervenors Natural Resources Defense Council and California Coastal Alliance, Inc., pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move the Court to dismiss this appeal or to affirm the judgment of the Court of Appeal of the State of California. The Jurisdictional Statement filed by appellant discloses

no substantial federal question herein which would require further argument.

THE QUESTION PRESENTED

Does a state's determination that it has jurisdiction over further proposed developments in a subdivision, under a newly enacted, comprehensive system of land use regulation, violate the Fourteenth Amendment of the United States Constitution, where no construction of the developments has begun and the developer has not obtained the other permits or approvals which are required for the construction of such developments?

STATEMENT OF THE CASE

In 1972, the people of the State of California, acting through the initiative process, passed the California Coastal Zone Conservation Act, Public Resources Code §§ 27000, *et seq.*, in order to provide for the preparation of a plan for the orderly, balanced development of the state's coastline. During this interim planning period, the Act further provided that any person wishing to develop property within the coastal zone must first obtain a permit therefor (Section 27400), unless the person had previously acquired a "vested right" to construct the development (Section 27404). The California Coastal Zone Conservation Commission was established to administer the Act, and the Commission immediately adopted regulations which provided for two distinct procedures for the disposition of applications for development permits and exemption claims.

See Cal. Administrative Code, Title 14, Div. 5.5, Chapters 5, 9 (1974).

Subsequently, appellant applied to the Commission for exemptions from the Coastal Act for various subdivision units known as The Sea Ranch, based on purported vested rights. Initially, the Commission granted exemptions for particular subdivision units, but it denied a later application filed by appellant for an exemption for The Sea Ranch in its entirety. Jurisdictional Statement at 2, 11 n. 9. The latter claim, which sought a blanket exemption for 5200 acres of land along ten miles of the Northern California coastline, is the subject of the instant appeal.

At no time has appellant ever sought a permit from the Commission to develop its property. Thus, its repeated assertion that the Commission has endeavored to "repudiate" or "stop development" at The Sea Ranch (*Id.*, at 5, 16), is not supported by any official action taken by the Commission. The Commission has never denied appellant the right to undertake further construction at The Sea Ranch. It has determined only that further development of substantial portions of The Sea Ranch is not exempt from the Act's permit requirement.[1]

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[1]Nor is appellant correct in asserting that the standards for reviewing permit applications under the Coastal Act of 1972 are "not yet articulated." *Id.* at 6. The Act contained various criteria for regulating interim coastal development. *See, e.g.*, Public Resources Code §§ 27001, 27302, 27401-27403. The 1972 Act expired on January 1, 1977, and its successor legislation, the California Coastal Act of 1976, Public Resources Code §§ 30000 *et seq.*, contained further "articulation" of the standards for reviewing permit applications. *See, e.g.*, Public Resources Code §§ 30200-30264.

While appellant had previously subdivided and improved some of its property on a unit-by-unit basis, vast acreage at The Sea Ranch remained largely undeveloped at the time the Coastal Act was passed and became effective in 1972. Indeed, although Oceanic contemplated a full build-out of 5200 dwellings at The Sea Ranch, only approximately 350 homes had been constructed. *Id.* at 10, 12.

These subdivision units were in varying stages of planning by the developer and had received varying levels of preliminary approvals by the local government for various kinds of work. Therefore, the Commission and the California courts, upon review, were required to sift through a welter of facts and documents which appellant presented in support of its claim.

As reflected in the opinion of the California Court of Appeal (attached as Appendix A to appellant's Jurisdictional Statement), this review disclosed, *inter alia,* that Oceanic had failed to secure any permits or other final approvals for the proposed developments at issue, prior to the effective date of the Coastal Act of 1972. In particular, Oceanic had failed to secure (1) permits required for proposed single family dwellings, including septic tank or sewer permits, permits for site grading, and building permits, (2) approvals required for proposed condominiums, including tentative maps, use permits, building permits, grading permits and precise development plan approvals, and (3) extensions of tentative subdivision maps, which were required for the subdivision of

other areas and which had previously lapsed. *Id.* at A-19, -21, -22.

Appellant also attempted to base its claim for vested rights in part on very general, preliminary governmental approvals, including the planned unit development ("PUD") zoning classification for The Sea Ranch, and the general and specific plans for the area. *Id.* at 11. Under state and local law, however, these ordinances and plans were expressly subject to amendment by the local government at any time, under broad public interest standards. *See* Cal. Government Code § 65356.1 (amendment of general plan); Government Code § 65507 (amendment of specific plan); Sonoma County Code § 26-227(2), (3) (amendment of PUD zoning classification).

The Court of Appeal not only evaluated the exemption claim in its entirety, but also carefully reviewed each of the particular circumstances surrounding each unit or category of developments for which an exemption was sought. It held that appellant had failed to establish a vested right to construct these developments, and the California Supreme Court denied a hearing in the matter.

APPELLANT PRESENTS NO SUBSTANTIAL FEDERAL QUESTION WHICH WOULD REQUIRE FURTHER ARGUMENT

This Court has recently dismissed another appeal which was based on circumstances very similar to those relied upon by appellant herein. *Avco Community Developers v. South Coast Regional Commission,* 17

Cal.3d 785 (1976), *appeal dismissed,* 45 U.S.L.W. 3664 (April 4, 1977). Appellant's claim is extraordinary only in its magnitude. While the developer in *Avco* sought an exemption for one subdivision of 74 acres, appellant has sought a blanket exemption for numerous subdivision units within 5200 acres.

This case does not involve any purported "taking" of private property. Nor does it raise any question concerning the legitimacy of the application of specific regulations to any particular parcels of land. Appellant has not applied for a permit from the Commission for further development at The Sea Ranch, and no final determination has otherwise been made concerning future development there. The question decided by the Coastal Commission and the courts below was solely whether or not the land encompassed by The Sea Ranch within the coastal zone would be subject to the *jurisdiction* of the Coastal Commission. *See Oceanic* Opinion, Jurisdictional Statement at A-26; *Avco Community Developers v. South Coast Regional Commission,* 17 Cal.3d 785, 802 (1976); *Urban Renewal Agency v. California Coastal Zone Conservation Commission,* 15 Cal.3d 577, 588, 589 (1975).

This type of jurisdictional determination raises no substantial federal question. In contrast to the circumstances in the present case, in *Reinman v. Little Rock,* 237 U.S. 171 (1915), and *Hadacheck v. Sebastian,* 239 U.S. 394 (1915), cited by appellant, this Court's jurisdiction was invoked to determine whether substantial business facilities, of long standing operation, could be prohibited by the retroactive application of a new zoning ordinance. *Cf. Goldblatt v. Town of Hempstead,* 369 U.S. 590 (1962). In *Dobbins v. Los Angeles,* 195 U.S. 223 (1904), a gas works authorized by a permit had already been partially completed when the city amended its ordinance to prohibit the maintenance of such a facility. In *Reinman* and *Hadacheck,* the application of the ordinances was upheld, while in *Dobbins* it was held unconstitutional.

For present purposes, it is unnecessary to determine where these few cases draw the line in determining when a zoning ordinance may be retroactively applied, consistent with principles of due process. In the instant case, the developments for which vested rights are claimed have not yet been constructed and were not even finally approved by local government at the time of the Coastal Act's passage. In addition, as previously noted, the decision below does not bar these developments but merely subjects them to the Coastal Act's permit requirements.

Even apart from these considerations, the thrust of appellant's argument herein is based on the erroneous premise that the California courts require "the issuance of a building permit, a mere ministerial act, as a *sine qua non* for a vested right. . . ." Jurisdictional Statement at 18. Even if it were assumed that such a requirement would raise questions of due process, appellant's assertion is flatly contradicted by the opinion of the Court of Appeal in this case: "It may be assumed that literal adherence to the issuance of a

'building permit' is *not* the *sine qua non* of the establishment of a vested right . . . ." *Id.* at A-9 (emphasis added). *See also Avco Community Developers, Inc. v. South Coast Regional Commission,* 17 Cal.3d 785, 794 (1976). Indeed, the standard for determining vested rights advanced by appellant is precisely the one which was applied by the Court of Appeal in this case. *See* Jurisdictional Statement at 19, A-9.

It is clear, therefore, that the question which Oceanic has framed for this Court is not whether the California courts have applied a principle of vested rights which is repugnant to the due process clause of the United States Constitution, but, rather, whether the Commission and the courts below properly interpreted the significance and scope of the different permits and approvals obtained by appellant under the local ordinances of Sonoma County, California. To answer this question, this Court would be required to steep itself in California's state and local zoning and subdivision laws and determine what precise authority for further development was granted to appellant by zoning classifications, general and specific plans, tentative and final subdivision maps, special use permits, and a variety of more particularized measures adopted at the local level—as well as the significance of appellant's failure to obtain various permits.

While the opinion of the Court of Appeal fulfills a commitment to afford appellant this type of extensive and searching review, such matters scarcely raise a substantial federal question. As Mr. Justice Marshall stated in his dissenting opinion in *Village of*

Belle Terre v. Boraas, 416 U.S. 1, 13 (1974), this Court does not "sit as a zoning board of appeal."

Finally, appellant purports to find support for its expansive exemption claim in general principles of equitable estoppel. However, to the extent principles of equitable estoppel have figured at all in the formulation of vested rights doctrine, their limited applicability against government[2] is fully accounted for in the traditional requirements of the vested rights doctrine applied in this case by the courts below. In all events, we have been unable to find any case in which principles of equitable estoppel have been generally equated with principles of due process. *See, e.g.,* Annot., 1 A.L.R.2d 338 (1948); Annot., 27 A.L.R. Fed. 702 (1976). Where estoppel has been applied against the government, the express bases for the decision have been only that equitable considerations require it and the public interest would not be unduly damaged. *See, e.g., Moser v. U.S.,* 341 U.S. 41 (1951); *U.S. v. Lazy F.C. Ranch,* 481 F.2d 985 (9th Cir. 1973). No substantial federal question is raised in such instances.

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[2]*See, e.g., Utah Power & Light Co. v. U.S.,* 243 U.S. 389 (1917); *County of San Diego v. Calif. Water, etc., Co.,* 30 Cal. 2d 817 (1947).

CONCLUSION

Based on the foregoing, we respectfully move this Court to dismiss this appeal or, in the alternative, to affirm the judgment of the California Court of Appeal entered in this case for the reason that no substantial federal questions are presented in the Jurisdictional Statement which would require further argument.

Dated, April 15, 1977.

Respectfully submitted,

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